United States Court of Appeals

for the Second Circuit

APPENDIX

Docket No. 76-5008

IN THE

United States Court of Appeals

For the Second Circuit

B

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff-Appellant,

— *vs* —

AETNA CASUALTY & SURETY COMPANY,

Defendant-Appellee.

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
APR 15 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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DOCKET ENTRIES.

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev. Civ-74-127

TITLE OF CASE	ATTORNEYS
OSEPH S. CARGES, as Trustee in Bankruptcy f PAUL R. DEAN & COMPANY, INC. v. AETNA CASUALTY AND SURETY COMPANY	For plaintiff: Justin L. Rigdor, Esq. 25 East Main Street Rochester, New York 14614 716-454-3480 Paul J. Suter, Esq. 45 Exchange Street Rochester, New York 14614 716-325-6446 Appeal: Bruce Lawrence, Esq. Burns, Suter & Doyle 45 Exchange Street Rochester, N.Y. 14614 For defendant: Richard M. Connors, Esq. Winchell, Connors and Corcoran 45 Exchange Street Rochester, New York 14614 716-232-5885

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk		2/13/74	#94409	15 00	
			3/21/74	Trans US CtD41		15 00
J.S. 6 mailed	Marshal					
Basis of Action: Removal-iversity-breach of olicy	Docket fee					
	Witness fees					
Action arose at:	Depositions					

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DOCKET ENTRIES.

Civ-74-127 Joseph S. Carges, as Trustee etc. v. Aetna Casualty and Surety Company

DATE	PROCEEDINGS	Date Order or Judgment Note
1974		
Mar. 13	Filed Petition & notice for Removal w/bond	
13	JS 5 made	
19	Filed stipulation extending time for deft. to answer to & including 4-1-74	
29	Filed Defts. answer to complaint.	
July 24	Filed Pltfs. Note of Issue for the Oct., 1974 - Term	
Sept. 19	Pretrial conference held.	
1975		
Feb. 6	Filed Defts. interrogatories to pltf.	
19	Filed Defts. notice to take deposition of Joseph S. Carges, Paul R. Dean & any other officers of Paul R. Dean Company on 2-18-75	
19	" Defts. Notice to take deposition of Justin L. Vigdor on 2-18-75	
21	Filed Pltfs. Note of Issue for the Rochester May, 1975 Term.	
May 9	Pretrial conference held.	
23	Filed defts. notice to take deposition of John L. Nichols on 6-9-75	
29	Filed Pltfs. answers to interrogatories	
27	Filed Deft's motion for order of preclusion and to delay trial date ret. at Roch. 5-27-75.	
27	Filed Deft's affidavit of service of motion.	
27	Filed Pltfs. affidavit.	
27	Motion by Deft. for order of preclusion & delay in trial date. The Ct. sets one wk. from today for filing answers to interrogatories. Trial date remains.	
June 11	Filed deposition subpoena to testify or produce documents or things served on Joan L. Nichols on 5-27-75	
11	Filed order to show cause why an order should not be made compelling pltf. to answer interrogatories Nos. 10, 11 & 13 etc. ret. 6-23-75-Burke, DJ Notice to Justin L. Vigdor & Winchell, Connors & Corcoran	F-165
16	Filed Pltfs. affidavit in opposition to the motion for an order compelling pltf. to answer interrogatories.	
23	Filed decision & order that on or before 6-30-75 the pltf. shall / serve on defts. attys. their answers to defts. interrogatories 10, 11 & 13 containing the details comprising the pltfs. answers etc.-Burke, DJ Notice & copies to Winchell, Connors & Corcoran and Justin L. Vigdor	F-165
23	Order to show cause to compel answers to interrogatories, etc. Submitted now.	
July 2	Filed Pltfs. Joseph S. Carges further answers to interrogatories of deft.	
7	Case moved ready for trial before Judge Burke without a jury	
8	Trial cont'd	
8	Filed 2 subpoenas--served 6/29/75 on John L. Nichols and 7/7/75 on Peter Paris	
9	Trial cont'd--dec. res. - briefs to be submitted 30 days after transcript is recd. - each side will have additional 15 days to answer	
10	Filed Writ of Habeas Corpus Ad Testificandum re Parul R. Dean with Marshal's return--served 7/7/75	
Sept. 2	Filed transcript of trial - 2 volumes	
1975		
Jan. 29	Filed Findings of Fact, Conclusions of Law, Order & Judgment that the F-17 action is dismissed with costs to the deft.-Burke, DJ Notice & copies to Justin Vigdor, Paul Suter & Richard Connors	
29	JS 6 mailed	

DOCKET ENTRIES.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO Civ-74-
Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc.	Aetna Casualty and Surety Co.	PAGE 2 OF ____ PA

DATE 1976	NR.	PROCEEDINGS
Feb. 17		Filed (at Roch.) Pltf's. Notice of Appeal (copy mailed to Mr. Connors and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Lawrence 2/18/76)

DC-111A (Rev.

SUMMONS AND COMPLAINT.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff

against

AETNA CASUALTY & SURETY COMPANY,

Defendant

Index No.

Plaintiff designates Monroe *County as the place of trial*

The basis of the venue is plaintiff's place of business

Summons

Plaintiff's business add:
19 Prince Street
Rochester, New York
County of Monroe

To the above named Defendant

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within* 20 *days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, February 1, 1974

MARTIN, DUTCHER, COOKE, MOUSAW & VIGDOR
Attorney(s) for Plaintiff

Defendant's Address:
Sibley Tower Bldg.
Rochester, New York

Office and Post Office Address
25 East Main Street
Rochester, New York 14614

SUMMONS AND COMPLAINT.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC., PLAINTIFF, - vs - AETNA CASUALTY & SURETY COMPANY, DEFENDANT.	COMPLAINT

Plaintiff, by his attorneys, JUSTIN L. VIGDOR and PAUL J. SUTER, for his complaint against defendant, AETNA CASUALTY & SURETY COMPANY (hereinafter "Aetna"), alleges upon information and belief as follows:

FOR A FIRST CAUSE OF ACTION:

1. Aetna is a corporation, duly organized and existing under the laws of the State of Connecticut and at all times hereinafter mentioned was, and still is, qualified to do business within the State of New York.

2. An Assignment for the Benefit of Creditors of PAUL R. DEAN & COMPANY, INC. (hereinafter the "Bankrupt") was filed with the County Clerk of the County of Monroe, State of New York, in Liber 4425 of Deeds, page 17, on the 4th day of April, 1973, wherein Justin L. Vigdor was named Assignee for the Benefit of Creditors.

3. On the 30th day of April, 1973, a Petition in Bank-

ruptcy was filed against the Bankrupt in the United States District Court for the Western District of New York, and on the 30th day of May, 1973, Justin L. Vigdor was appointed Receiver, to take charge of the property of the Bankrupt and to protect the interests of its creditors until such time as a trustee in bankruptcy was appointed.

4. On the 19th day of June, 1973, plaintiff was duly appointed Trustee in Bankruptcy of the Bankrupt and duly qualified and is now acting in said capacity, and is a resident of the State of New York, County of Monroe.

5. By operation of law, plaintiff succeeded to the rights of the said Receiver, said Assignee for the Benefit of Creditors, and the Bankrupt (hereinafter "plaintiff's Predecessors"), with respect to the matters hereinafter set forth.

6. On or about the 15th day of October, 1966, for a valuable consideration, Aetna executed and delivered to the Bankrupt a Brokers Blanket Bond (the "Original Bond"), under seal, wherein and whereby Aetna bound itself in the sum of two hundred thousand dollars ($200,000.00), to indemnify and hold harmless the Bankrupt, among other things, for and against any loss sustained by the Bankrupt by the dishonest, fraudulent, or criminal acts of any employee, committed anywhere, during the life of the policy or any renewal thereof. A copy of said Original Bond is annexed hereto, marked Attachment "A," and made part hereof.

7. On or about the 15th day of October, 1971, the Original Bond was renewed and altered, and a Stock Brokers Blanket Bond (the "Renewal Bond") was issued by Aetna, which, among other things, provided substantially similar indemnities and increased

the coverage from two hundred thousand dollars ($200,000.00) to two hundred fifty thousand dollars ($250,000.00). A copy of the Renewal Bond is annexed hereto, marked Attachment "B," and made part hereof.

8. Prior to the 4th day of April, 1973, and during the term of said bonds, and while the same were in full force and effect, the Bankrupt sustained losses substantially in excess of two hundred fifty thousand dollars ($250,000.00), entitling it to indemnity thereunder.

9. Plaintiff and his Predecessors have duly complied with all the terms and conditions on their part to be performed, except to the extent that such compliance has been waived by Aetna or was, and is, not required by reason of prevailing legal and equitable principles.

10. On the 4th day of September, 1973, Aetna notified plaintiff that it was not liable on either the Original Bond or the Renewal Bond, and disclaimed all liability under said Bonds to the plaintiff and his Predecessors.

11. No part of said sum of two hundred fifty thousand dollars ($250,000.00) has been paid to either the plaintiff or his Predecessors, although payment thereof has been duly demanded.

12. By reason of the foregoing, Aetna is indebted to the plaintiff in the sum of two hundred fifty thousand dollars ($250,000.00), with interest thereon from the 4th day of April, 1973, no part of which has been paid.

FOR A SECOND CAUSE OF ACTION:

13. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "8" above, with the same force and effect as if at length set forth.

14. During the month of April, 1973, Aetna, by its duly authorized representatives, orally acknowledged its liability under the bonds and represented that it had reserved the face amount of the Renewal Bond for payment to properly authorized parties.

15. That at the time of its oral promise to pay, Aetna intended that plaintiff and his Predecessors rely on such promise and representations.

16. That at the time of said promise and representations aforesaid, Aetna knew that said representations were false and that it would not voluntarily make payment to the plaintiff or his Predecessors.

17. That the plaintiff and his Predecessors acted in reliance upon said representations and promise to their damage, and that Aetna is estopped from refusing payment to the plaintiff and from denying liability.

18. That by reason of the foregoing, Aetna is liable to the plaintiff in the sum of two hundred fifty thousand dollars ($250,000.00), together with interest from April 4, 1973.

FOR A THIRD CAUSE OF ACTION:

19. Plaintiff repeats and realleges the allegations contained in Paragraphs "1" through "8" and "14" through "17" above, with the same force and effect as if at length set forth.

20. Through its authorized representatives, Aetna intentionally and fraudulently misrepresented its intention to pay to plaintiff or his Predecessors the full face amount of the Renewal Bond, and that such misrepresentations of a material fact, which Aetna knew were untrue at the time they were made, were committed by Aetna with the intention to deceive and defraud the plaintiff and his Predecessors and to induce them to act in accordance with such representations.

21. Plaintiff and his Predecessors were unaware of Aetna's true intentions and believed Aetna's representations to be true.

22. Plaintiff and his Predecessors relied upon the representations as aforesaid, and as a result thereof were damaged thereby.

23. By reason of Aetna's tortious, fraudulent conduct as aforesaid, plaintiff and his Predecessors sustained damages in the amount of two hundred fifty thousand dollars ($250,000.00).

FOR A FOURTH CAUSE OF ACTION:

24. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "8," "14" through "17," and "20" through "22" above, to the same extent as if at length set forth.

25. Aetna's obligations under the Original Bond, Renewal Bond, and oral promise to pay the face amount of the latter were, by operation of law, intended to benefit creditors of the Bankrupt insured, whose interests are represented and protected by plaintiff as Trustee in Bankruptcy.

26. As third-party beneficiaries of the three said agreements, said creditors possess rights which are independent of those of plaintiff, those of his Predecessors, and those of the Bankrupt; and these third-party beneficiary rights may be asserted and protected by plaintiff in this action, and are indefeasible by any acts or failures to act on the part of the plaintiff, his Predecessors, the Bankrupt, or its employees.

27. Aetna has failed and refused to pay under said three agreements, although payment thereof has been duly demanded.

28. By reason thereof, and for the benefit of and for distribution to the creditors, plaintiff is entitled to damages under the said agreements in the sum of two hundred fifty thousand dollars ($250,000.00).

FOR A FIFTH CAUSE OF ACTION:

29. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "8," "14" through "17," "20" through "22," and "25" through "27" above, with the same force and effect as if at length set forth herein.

30. The Original Bond, Renewal Bond, and all correspondence and conduct on the part of Aetna subsequent to April 4, 1973 with respect thereto, were replete with complexities, technicalities, ambiguities, and were deliberately designed to ensnare the plaintiff, his Predecessors, the Bankrupt, and all persons rightfully intended to be benefitted and covered thereunder.

31. All conduct on the part of Aetna regarding claims and settlement of such claims subsequent to April 4, 1973 was, in light of the confusion surrounding the financial collapse of the

Bankrupt, intentionally calculated to delay, mislead, confuse, confound, and frustrate the plaintiff and his Predecessors, and to erect impediments and obstacles to plaintiff and his Predecessors in their efforts to recover the indemnities for which premiums had been in good faith paid by the Bankrupt over a period of six years prior to the 4th day of April, 1973.

32. That by reason of the foregoing, compensatory damages are inadequate, and in the interests of justice, and to discourage unconscionable business practices, this Court should assess punitive damages against Aetna in treble the amount of the Renewal Bond, viz., seven hundred fifty thousand dollars ($750,000.00) punitive damages.

WHEREFORE, plaintiff demands judgment against the defendant:

(a) In the sum of two hundred fifty thousand dollars ($250,000.00) under the First, Second, Third, and Fourth Causes of Action,

(b) In the sum of seven hundred fifty thousand dollars ($750,000.00) as punitive damages under the Fifth Cause of Action,

(c) Interest on one million dollars ($1,000,000.00) from April 4, 1973 to the date of entry of judgment,

(d) The costs and disbursements of this action and

(e) Such other and further relief as to the Court may seem just and proper.

JUSTIN L. VIGDOR
25 East Main Street
Rochester, New York 14614
Telephone: 454-3480

PAUL J. SUTER
45 Exchange Street
Rochester, New York 14614
Telephone: 325-6446

Co-Attorneys for Plaintiff

Attachment A – Original Bond
annexed to Complaint.

Brokers Blanket Bond
Standard Form No. 14.
Revised to March 28, 1949.
SB 5016

The Ætna Casualty and Surety Company

Hartford, Connecticut 06115

AMOUNT $ 200,000.00

BROKERS BLANKET BOND
Standard Form No. 14

BOND NO. 45 F 1259 BC

In consideration of an agreed premium, THE ÆTNA CASUALTY AND SURETY COMPANY, a corporation of the State of Connecticut, with its Home Office in the City of Hartford, hereinafter referred to as Underwriter, hereby undertakes and agrees to indemnify and hold harmless PAUL R. DEAN & CO., INC. hereinafter referred to as Insured, to an amount not exceeding Two Hundred Thousand and no/100—— Dollars ($ 200,000.00), from and against any losses sustained by the Insured subsequent to noon of the date hereof and while this bond is in force, subject, however, to the paragraph of this bond entitled INDEMNITY AGAINST LOSS UNDER PRIOR BOND OR POLICY, and discovered by the Insured subsequent to noon of the date hereof, and prior to the expiration of twelve months after the termination of this bond as an entirety as provided in the first paragraph of Section 10 or in any other manner.

Indemnity Against Loss Under Prior Bond or Policy

If the coverage of this bond is substituted for any prior bond or policy of insurance carried by the Insured or by any predecessor in interest of the Insured which prior bond or policy is terminated, canceled or allowed to expire as of the time of such substitution, the Underwriter agrees to indemnify the Insured against loss sustained by the Insured and discovered as aforesaid and which would have been recoverable by the Insured or such predecessor under such prior bond or policy except for the fact that the time within which to discover loss thereunder had expired; PROVIDED: (1) the indemnity afforded by this paragraph shall be a part of and not in addition to the amount of coverage applicable to such loss or losses under this bond; and (2) such loss or losses would have been covered under this bond, had this bond with its agreements, limitations and conditions as of the time of such substitution been in force when the acts or omissions or casualty or event causing such loss or losses occurred; and (3) recovery under this bond on account of such loss or losses shall in no event exceed the amount which would have been recoverable under the coverage applicable to such loss or losses under this bond in the amount for which such coverage is written as of the time of such substitution, had this bond been in force when such acts or omissions or casualty or event occurred, or the amount which would have been recoverable under such prior bond or policy had such prior bond or policy continued in force until the discovery of such loss or losses, if the latter amount be smaller.

Definition of Property

Wherever used in this bond Property shall be deemed to mean money, currency, coin, bank notes, Federal Reserve notes, postage and revenue stamps, U.S. Savings Stamps, bullion, precious metals of all kinds and in any form and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, bonds, securities, evidences of debts, debentures, scrip, certificates, interim receipts, warrants, rights, puts, calls, straddles, spreads, transfers, coupons, drafts, bills of exchange, acceptances, notes, checks, money orders, warehouse receipts, bills of lading, withdrawal orders, conditional sales contracts, abstracts of title, insurance policies, deeds, mortgages upon real estate and/or upon chattels and upon interests therein, and assignments of such policies, mortgages and instruments, and all other instruments similar to or in the nature of the foregoing, in which the Insured has an interest or which are held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor.

Definition of Employees

Wherever used in this bond Employee and Employees shall be deemed to mean, respectively, one or more of the officers, clerks and other employees while employed by the Insured during the currency of this bond, and wherever located, and Guest Students pursuing their studies or duties in any of the Insured's offices.

THE LOSSES COVERED BY THIS BOND ARE AS FOLLOWS:

Fidelity

(A) Any loss through any dishonest, fraudulent or criminal act of any of the Employees, committed anywhere and whether committed alone or in collusion with others, including loss of Property through any such act of any of the Employees.

On Premises

(B) Any loss of Property through robbery, burglary, common-law or statutory larceny, theft, hold-up, or other fraudulent means, misplacement, mysterious unexplainable disappearance, damage or destruction, abstraction or removal from the possession, custody or control of the Insured (whether effected with or without violence or with or without negligence on the part of any Employee), and any loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of Property, while the Property is (or is supposed to be) within any of the Insured's offices covered under this bond, or within the offices of any banking institutions or Clearing Houses wherever located, or within any recognized places of safe deposit wherever located, or is actually within the United States Treasury Department, Washington, D.C., United States Sub-Treasuries, United States Mints or United States Assay Offices, or is actually within the offices of any signature companies for the purpose of signature or is actually within the offices of the issuers thereof or of any agents of such issuers for the purpose of issuance, validation, exchange, redemption, conversion, endorsement, transfer or registration, or of any persons employed or authorized by the Insured to procure or manage the issuance, validation, exchange, redemption, conversion, endorsement, transfer or registration thereof.

Offices and Equipment

Any loss of furnishings, fixtures or equipment in any of the Insured's offices covered under this bond, or any loss through damage to any such office and to the furnishings, fixtures or equipment therein, in either case caused by larceny or theft in, or by burglary, robbery or hold-up of, such office, or attempt thereat, or by vandalism or malicious mischief, provided that the Insured is the owner of such offices, furnishings, fixtures or equipment or is liable for such loss or damage,—always excepting, however, all loss or damage through fire.

In Transit

(C) Any loss of Property (occurring with or without negligence) through robbery, common-law or statutory larceny, embezzlement, theft, misappropriation, hold-up, misplacement, mysterious unexplainable disappearance, being lost or otherwise made away with, damage or destruction, and any loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of Property, while the Property is in transit anywhere in the custody of any of the Employees or of any other person acting as messenger, except while in the mail or with a carrier for hire other than an armored motor vehicle company for the purpose of transportation, such transit to begin immediately upon receipt of such Property by the transporting Employee or such other person, and to end immediately upon the delivery thereof at destination.

Attachment "A"

BEST COPY AVAILABLE

Attachment A — Original Bond annexed to Complaint.

Court Costs and Attorneys' Fees

(Applicable to all insuring Clauses now or hereafter forming part of this bond)

The Underwriter will indemnify the Insured against court costs and reasonable attorneys' fees incurred and paid by the Insured in defending any suit or legal proceeding brought against the Insured to enforce the Insured's liability or alleged liability on account of any loss, claim or damage which, if established against the Insured, would constitute a valid and collectible loss sustained by the Insured under the terms of this bond. Such indemnity shall be in addition to the amount of this bond. In consideration of such indemnity, the Insured shall promptly give notice to the Underwriter of the institution of any such suit or legal proceeding; at the request of the Underwriter shall furnish it with copies of all pleadings and other papers therein; and at the Underwriter's election shall permit the Underwriter to conduct the defense of such suit or legal proceeding, in the Insured's name, through attorneys of the Underwriter's own selection. In the event of such election by the Underwriter, the Insured shall give all reasonable information and assistance, other than pecuniary, which the Underwriter shall deem necessary to the proper defense of such suit or legal proceeding.

Offices Covered

The offices of the Insured covered under this bond are:

(a) all of its offices, established or to be established, which are located in the United States of America and Dominion of Canada, and

(b) the office or offices of the Insured outside the United States of America and Dominion of Canada and located as follows:

Additional Offices

No notice to the Underwriter of an increase during any premium period in the number of the Insured's offices located in the United States of America or Dominion of Canada, or in the number of Employees at any of the offices covered under this bond, need be given and no additional premium need be paid for the remainder of such premium period unless such increase shall result from the merger or combination with the Insured of another firm.

If the Insured shall give to the Underwriter notice that it desires covered under this bond any office located outside the United States of America and Dominion of Canada, and not specified above, then, if the Underwriter shall give its written consent thereto, such office shall be covered under this bond on and after the date specified in such notice and an additional premium shall be paid.

THE FOREGOING AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

Section 1. THIS BOND DOES NOT COVER:

(a) Any loss effected directly or indirectly by means of forgery, except when covered by Insuring Clause (A).

(b) Any loss due to riot or civil commotion outside the United States of America and Dominion of Canada or due to military, naval or usurped power, war or insurrection wherever occurring unless such loss occurs in transit in the circumstances recited in Insuring Clause (C) and unless, when such transit was initiated, there was no knowledge of such riot, civil commotion, military, naval or usurped power, war or insurrection on the part of any person acting for the Insured in initiating such transit; or any loss due to hurricane, cyclone, tornado, earthquake, volcanic eruption or similar disturbance of nature.

(c) Any loss resulting directly or indirectly from the act or acts of any person who is a member of the Board of Directors of the Insured or a member of any equivalent body by whatsoever name known unless such person is also an Employee or an elected official of the Insured in some other capacity, nor, in any event, any loss resulting directly or indirectly from the act or acts of any person while acting in the capacity of a member of such Board or equivalent body; or any loss resulting directly or indirectly from any dishonest, fraudulent or criminal act or acts of any partner of the Insured.

(d) Any loss the result of any loan made by the Insured or by any of the Employees, whether authorized or unauthorized, except when covered under Insuring Clause (A).

(e) Any loss of Property contained in customers' safe deposit boxes unless such loss be sustained through any dishonest, fraudulent or criminal act of an identifiable Employee under such circumstances as shall make the Insured legally liable therefor.

(f) Any loss of Property or any loss of privileges through the misplacement or loss of property as set forth in Insuring Clause (C) while the Property is in transit in the custody of any armored motor vehicle company, unless such loss shall be in excess of the amount recovered or received by the Insured under (a) the Insured's contract with said armored motor vehicle company, (b) insurance carried by said armored motor vehicle company for the benefit of users of its service, and (c) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service, and then this bond shall cover only such excess.

(g) Any loss resulting directly or indirectly from trading, with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, and notwithstanding any act or omission on the part of any Employee in connection with any account relating to such trading, indebtedness, or balance.

Warranty

Section 2. No statement made by or on behalf of the Insured, whether contained in the application or otherwise, shall be deemed to be a warranty of anything except that it is true to the best of the knowledge and belief of the person making the statement.

Loss—Notice—Proof—Legal Proceedings

Section 3. The Insured shall give to the Underwriter written notice of any loss under this bond as soon as possible after the Insured shall learn of such loss, and within thirty days after learning of such loss shall file with the Underwriter a sworn proof of claim duly sworn to. The Underwriter shall have thirty days after notice and proof of loss within which to investigate the claim, but where the loss is clear and undisputed, settlement shall be made within forty-eight hours; and this shall apply notwithstanding the loss is made up wholly or in part of securities of which duplicates may be obtained. No action or proceeding shall be brought under this bond in regard to any loss, unless begun within twenty-four months after the Insured shall learn of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in the paragraph entitled Court Costs and Attorneys' Fees, or to recover attorneys' fees paid in any such suit, shall be begun within twenty-four months from the date upon which the judgment in such suit shall become final, or in case such limitation be void under the law of the place governing the construction hereof, then within the shortest period of limitation permitted by such law.

Valuation

Securities

Section 4. The value of any securities, for the loss of which claim shall be made under this bond, shall be determined by the cost of an equivalent amount of securities of the same issue purchased by or at the instance of the Underwriter; provided, however, that if, prior to such purchase by or at the instance of the Underwriter, the Insured shall be compelled, by the demands of a third party or by market rules, to assume the cost of an equivalent amount of securities of the same issue, and shall notify the Underwriter, in writing, of such compulsion, such cost shall be taken as the value of such securities. The amount of the Insured's claim on account of any such loss shall be deemed to be the cost of such securities as herein determined. In case of a loss of subscription, conversion, redemption or deposit privileges as above set forth, the amount of such loss shall be the value of such privileges immediately preceding the expiration thereof. If any securities for the loss of which claim shall be made under this bond cannot be replaced or have no quoted market value, or if such subscription, conversion, redemption or deposit privileges have no quoted market value, their value shall be determined by agreement or arbitration. Any loss sustained under this bond of money, currency or funds of any country shall be paid in the United States of America dollar equivalent of the money, currency or funds of such country. Any other loss sustained at any of the Insured's offices covered under this bond and payable in money shall be paid in the United States of America dollar equivalent of the money, currency or funds of the country in which such office is located. Any foreign exchange loss for which claim shall be made under this bond shall be determined by the average rate of exchange on the day preceding the discovery of such loss.

Property Other Than Securities

In the case of any loss of or damage to any Property, other than securities, or damage to the Insured's offices covered under this bond, or loss of or damage to the furnishings, fixtures or equipment therein, the Underwriter shall not be liable for more than the actual cash value of such Property, or of such furnishings, fixtures or equipment or for more than the actual cost of repairing such Property or offices, furnishings, fixtures or equipment or of replacing same with property or material of like quality and value. The Underwriter may, at its election, pay such actual cash value, or make such repairs or replacements.

Salvage

Section 5. In case of recovery, whether made by the Insured or the Underwriter, on account of any loss coming within the coverage of this bond, from any source other than insurance, suretyship, indemnity or reinsurance, the net amount of such recovery, after deducting the actual cost and expense of making

Attachment A — Original Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 14, No. 45 F 1259 BC ,

issued by THE ÆTNA CASUALTY AND SURETY COMPANY ,

in favor of Paul R. Dean & Co., Inc. ,

and dated October 15, 1966

In consideration of the premium charged for the attached bond, it is agreed that:

1. The attached bond is hereby amended by deleting from the first paragraph of Insuring Clause (B) that part beginning with the words "within any of the Insured's offices" to the end of the said paragraph and by substituting in lieu thereof the following:

> "lodged or deposited within any offices or premises located anywhere, except while in the mail or in any of the Insured's offices specifically excluded from the coverage of this bond or with a carrier for hire other than an armored motor vehicle company for the purpose of transportation."

2. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

3. This rider shall become effective as of noon of the 15th day of October , 19 66.

Signed, sealed and dated

The Ætna Casualty and Surety Company

Attest: .....
Resident Assistant Secretary.

By (Signature Waived)
Resident Vice-President.

PREMISES RIDER

FOR USE WITH BROKERS BLANKET BOND, STANDARD FORM NO. 14, TO EXTEND THE COVERAGE OF INSURING CLAUSE (B), WHEN ISSUED TO ANY ELIGIBLE INSURED WHO ARE MEMBERS OF THE NEW YORK STOCK EXCHANGE OR OF ANY OTHER RECOGNIZED STOCK EXCHANGE OR WHOSE PRINCIPAL BUSINESS IS MANAGEMENT OF OR DEALING IN SECURITIES LISTED ON SUCH EXCHANGES OR IN UNLISTED SECURITIES; EXCLUDING, HOWEVER, ANY SUCH CONCERN ENGAGED IN ANY OTHER FORM OF FINANCING SUCH AS FINANCE COMPANIES, DEALERS IN MORTGAGES OR COMMERCIAL PAPER OR NOTE BROKERS.
REVISED TO MARCH 28, 1949.

SR 5276 Printed in U.S.A.
(F-807)

Attachment A — Original Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 14, No. 45 F 1259 BC ,

issued by THE ÆTNA CASUALTY AND SURETY COMPANY ,

in favor of Paul R. Dean & Co., Inc. ,

and dated October 15, 1966

In consideration of the premium charged for the attached bond, it is agreed that:

1. The attached bond is hereby amended:
   (a) by deleting that part of the opening paragraph beginning with the words "sustained by the Insured" to the end of the said paragraph and by substituting in lieu thereof the following: "sustained and discovered as hereinafter set forth.";
   (b) by deleting the paragraph entitled "INDEMNITY AGAINST LOSS UNDER PRIOR BOND OR POLICY";
   (c) by inserting "and other valuable papers and documents" in the DEFINITION OF PROPERTY after the words "mortgages and instruments";
   (d) by inserting after the paragraph entitled "COURT COSTS AND ATTORNEYS' FEES" the following:

"THE LOSSES COVERED BY THIS BOND ARE THOSE SUSTAINED AND DISCOVERED AS FOLLOWS:

"1. Losses sustained by the Insured after noon of the date hereof and while this bond is in force.

"2. Losses sustained by the Insured at any time before the termination or cancelation of this bond as an entirety, which would have been recoverable under the coverage of any other insurance carried by the Insured or any predecessor in interest of the Insured and giving some or all of the coverage afforded under the Insuring Clause of this bond applicable to such losses, had such other insurance given all the coverage afforded under such Insuring Clause of this bond; PROVIDED, with respect to losses covered by this paragraph, that

(a) the applicable coverage of this bond is substituted, on or after noon of the date of this bond, for the coverage given by such other insurance and the Insured or such predecessor, as the case may be, carried such coverage continuously from the time such losses are sustained to the date and hour the coverage of this bond is substituted therefor, and

(b) such coverage in force at the time such losses are sustained gave some or all of the coverage afforded under the Insuring Clause of this bond applicable to such losses, and

(c) at the time of discovery of such losses, the period for discovery of loss under all bonds and policies of insurance which afford coverage applicable to such losses and for which the coverage of this bond is substituted, has expired, and

(d) if the applicable amount of this bond is larger than the amount of coverage under any other insurance carried by the Insured or such predecessor, as the case may be, and in force at the time such losses are sustained, and giving some or all of the coverage afforded under the Insuring Clause of this bond applicable to such losses, then liability hereunder for such losses shall not exceed the smaller amount.

"3. Losses referred to in paragraphs 1 and 2 immediately preceding must be discovered by the Insured prior to the expiration of twelve months after the termination or cancelation of this bond as an entirety, as hereinafter set forth, or by mutual agreement."

2. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

3. This rider shall become effective as of noon of the 15th day of October , 19 66 .

Signed, sealed and dated

The Ætna Casualty and Surety Company

Attest: .....
Resident Assistant Secretary.

By (Signature Waived)
Resident Vice-President.

RETROACTIVE EXTENSION RIDER
FOR USE WITH BROKERS BLANKET BOND, STANDARD FORM NO. 14, TO AMEND THE DEFINITION OF PROPERTY AND TO ADD RETROACTIVE EXTENSION.
REVISED TO MARCH 29, 1949.

SR 5384 Printed in U.S.A.
(F-816)

Attachment A — Original Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 14 , No. 45 F 1259 BC ,

in favor of Paul R. Dean & Co., Inc.

and dated October 15, 1966

In consideration of the premium charged for the attached bond, it is agreed that:

1. The attached bond is hereby amended:

(a) by adding thereto an additional Insuring Clause as follows:

"COUNTERFEIT CURRENCY INSURING CLAUSE

"Any loss through the receipt by the Insured, in good faith, of any counterfeited or altered paper currencies or coin of the United States of America issued or purporting to have been issued by the United States of America or issued pursuant to a United States of America Statute for use as currency."

(b) by adding to sub-section (a) of Section 1 the following:

"or the Counterfeit Currency Insuring Clause".

2. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

3. This rider shall become effective as of noon of the 15th day of October , 19 66 .

Signed, sealed and dated

Attest: By:

COUNTERFEIT CURRENCY INSURING CLAUSE RIDER
FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 14, 14 (CONSOLIDATED FORM), TO ADD THE COUNTERFEIT CURRENCY INSURING CLAUSE.
REVISED TO MARCH, 1952.

SR 3408a Printed in U.S.A.

Attachment A — Original Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 14 , No. 45 F 1259 BC ,

In favor of Paul R. Dean & Co., Inc. ,

and dated October 15, 1966

In consideration of the premium charged for the attached bond, it is agreed that:

1. The attached bond is hereby amended:

   (a) by inserting ", stationery, supplies" in the "Offices and Equipment" paragraph of the Insuring Clause entitled "On Premises" after the word "fixtures" wherever it appears in such paragraph;

   (b) by deleting the second paragraph of the Section of the attached bond entitled "Valuation" and by substituting in lieu thereof the following:

"Books of Accounts and Other Records

"In case of any loss of or damage to Property consisting of books of accounts or other records used by the Insured in the conduct of its business, the Underwriter shall be liable under this bond only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the Insured in order to reproduce such books and other records.

"Property other than Securities or Records

"In case of any loss of or damage to any Property other than securities, books of accounts or other records as aforesaid or damage to the Insured's offices covered under this bond, or loss of or damage to the furnishings, fixtures, stationery, supplies and equipment therein, the Underwriter shall not be liable for more than the actual cash value of such Property, or of such furnishings, fixtures, stationery, supplies and equipment, or for more than the actual cost of repairing such Property or offices, furnishings, fixtures, stationery, supplies and equipment, or of replacing same with property or material of like quality and value. The Underwriter may, at its election, pay such actual cash value, or make such repairs or replacements."

2. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

3. This rider shall become effective as of noon on October 15, 1966

Attest: By:

Accepted:

BOOKS AND RECORDS RIDER

FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 5, 14, 14 (CONS.) AND 20, TO AMEND THE "OFFICES AND EQUIPMENT" PARAGRAPH OF THE PREMISES INSURING CLAUSE AND TO INSERT IN THE VALUATION SECTION A PROVISION FOR THE VALUATION OF ANY LOSS OF OR DAMAGE TO PROPERTY CONSISTING OF BOOKS OF ACCOUNTS OR OTHER RECORDS USED BY THE INSURED IN THE CONDUCT OF ITS BUSINESS.

REVISED TO DECEMBER, 1961.

SR 5463a Printed in U.S.A.

Attachment A — Original Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 14 , No. 45 F 1259 53 ,

in favor of Paul R. Dean & Co., Inc. ,

and dated October 15, 1966

In consideration of the premium charged for the attached bond, it is agreed that:

1. Anything in the attached bond to the contrary notwithstanding, the attached bond does not cover any loss, in time of peace or war, directly or indirectly caused by or resulting from the effects of nuclear fission or fusion or radio-activity; provided, however, that this paragraph shall not apply to loss resulting from industrial uses of nuclear energy.

2. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

3. This rider shall become effective as of noon of the 15th day of October , 19 66 .

Signed, sealed and dated

Attest:

Accepted:

RIDER
FOR USE WITH ALL BANKERS BLANKET TYPES OF BOND, TO EXCLUDE LOSS FROM THE EFFECTS OF NUCLEAR FISSION OR FUSION OR RADIO-ACTIVITY.
REVISED TO JANUARY, 1958.
SR 5512b Printed in U.S.A.

Attachment A – Original Bond annexed to Complaint.

DISCOVERY RIDER

(For use **only** with **primary** Forms Nos. 14 and 14 Cons.)

To be attached to and form part of Blanket Bond, Standard Form No. 14 , No. 45 F 1259 BC

in favor of Paul R. Dean & Co., Inc.

and dated October 15, 1966

In consideration of the premium charged for the attached bond, it is hereby agreed that:

1. The attached bond is amended:

(a) by deleting from the opening paragraph the words "sustained and discovered as hereinafter set forth" and by substituting in lieu thereof the following:

"sustained by the Insured at any time but discovered after noon of the 15th day of October , 19 66 , and prior to the termination or cancelation of this bond as an entirety, as hereinafter set forth, or by mutual agreement."

(b) by deleting in its entirety the provision of the attached bond beginning with the words "THE LOSSES COVERED BY THIS BOND ARE THOSE SUSTAINED AND DISCOVERED AS FOLLOWS",

(c) by deleting from the Section entitled "LIMIT OF LIABILITY UNDER THIS BOND AND PRIOR INSURANCE" that part reading "which occur partly during the period of this bond and partly during the period of" and by substituting in lieu thereof the following:

"which are recoverable or recovered in whole or in part under any"

(d) by adding to the Conditions and Limitations an additional Section reading as follows:

"RIGHTS AFTER TERMINATION OR CANCELATION

"Section . At any time prior to the termination or cancelation of this bond as an entirety, whether by the Insured or the Underwriter, the Insured may give to the Underwriter notice that it desires under this bond an additional period of twelve months within which to discover loss sustained by the Insured prior to the effective date of such termination or cancelation and shall pay an additional premium therefor. Upon receipt of such notice the Underwriter shall give its written consent thereto; provided, however, that such additional period of time shall terminate forthwith on the effective date of any insurance obtained by the Insured or its successors in business replacing in whole or in part the insurance afforded by this bond and in such event the Underwriter shall refund any unearned premium."

2. If the coverage of the attached bond supersedes in whole or in part the coverage of any other bond or policy of insurance issued by an Insurer other than the Underwriter and terminated, canceled or allowed to expire, the Underwriter, with respect to any loss or losses sustained prior to such termination, cancelation or expiration and discovered within the period permitted under such other bond or policy for the discovery of loss thereunder, shall be liable under the attached bond only for that part of such loss or losses covered by the attached bond as is in excess of the amount recoverable or recovered on account of such loss or losses under such other bond or policy, anything to the contrary in such other bond or policy notwithstanding.

3. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

4. This rider shall become effective as of noon of the 15th day of October 19 66

Signed, sealed and dated

Attest: By:

DISCOVERY RIDER

FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 14 AND 14 CONS. WHEN ISSUED AS PRIMARY COVERAGE TO ANY ELIGIBLE INSURED WHICH IS A MEMBER OF THE NEW YORK STOCK EXCHANGE OR OTHER RECOGNIZED STOCK EXCHANGE OR WHOSE PRINCIPAL BUSINESS IS MANAGEMENT OF OR DEALING IN SECURITIES LISTED ON SUCH EXCHANGES OR IN UNLISTED SECURITIES, EXCLUDING, HOWEVER, ANY SUCH CONCERN ENGAGED IN ANY OTHER FORM OF FINANCING SUCH AS FINANCE COMPANIES, DEALERS IN MORTGAGES OR COMMERCIAL PAPER OR NOTE BROKERS, TO CONVERT SUCH BONDS INTO DISCOVERY FORMS.

REVISED TO FEBRUARY 1956

SR 5569 Printed in U.S.A.

Attachment A — Original Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond Standard Form No. 14 , No. 45 F 1259 BC,

in favor of Paul R. Dean & Co., Inc. ,

and dated October 15, 1966

It is agreed that:

1. The attached bond is amended:

   (a) by inserting in the Definition of Property after the words "in which the Insured has an interest" the following:

   "or in which the Insured acquired or should have acquired an interest by reason of a predecessor's declared financial condition at the time of the Insured's consolidation or merger with, or purchase of the principal assets of, such predecessor".

   (b) by inserting in the Definition of Employees after the words "and wherever located," the following:

   "and one or more of the officers, clerks and other employees of any predecessor of the Insured whose principal assets are acquired by the Insured by consolidation or merger with, or purchase of assets of, such predecessor".

2. This rider is effective as of noon on October 15, 1966

RIDER

FOR USE WITH STANDARD FORMS NOS. 14 AND 14 (CONS.), DISCOVERY FORMS, TO AMEND THE DEFINITIONS OF PROPERTY AND EMPLOYEES TO INCLUDE REFERENCE TO A PREDECESSOR IN INTEREST OF THE INSURED.
REVISED TO SEPTEMBER, 1963.

SR 5809 Printed in U.S.A.

same, shall be applied, if such recovery be made before payment by the Underwriter, as follows: if such loss be in excess of the amount of this bond plus the amount of the insurance of any co-insurers of the Underwriter and plus the amount of any deductible (i.e., the amount over which this bond is written as excess, or that part of any loss or losses which must be deducted before insurance under this bond applies) and of any underlying insurance or suretyship, then such net recovery shall be applied to such excess in reduction of the loss of the Insured and the balance, if any, shall be applied to that part of such loss for which the Underwriter and its co-insurers, if any, are liable; or if there be no such excess loss, then such net recovery shall be applied to that part of such loss for which the Underwriter and its co-insurers, if any, are liable. If such recovery be made after payment by the Underwriter, then such net recovery shall be applied as follows: if there be any such excess loss, then such net recovery shall be applied to such excess, and the balance, if any, shall be applied to the reimbursement of the Underwriter and its co-insurers, if any, proportionately; or if there be no such excess loss, such net recovery shall be applied to the reimbursement of the Underwriter and its co-insurers, if any, proportionately. The Insured shall execute all necessary papers to secure to the Underwriter the rights herein provided for.

Non-reduction of Liability

Section 6. Payment of loss under this bond shall not reduce the liability of the Underwriter under this bond for other losses whenever sustained; PROVIDED, however, that the total liability of the Underwriter under this bond on account of (a) any loss or losses caused by any one act of burglary, robbery or hold-up, or attempt thereat, in which no Employee is concerned or implicated, or (b) any loss or losses with respect to any one unintentional or negligent act or omission on the part of any person (whether one of the Employees or not) resulting in damage to or destruction or misplacement of Property, or (c) any loss or losses other than those specified in (a) and (b) preceding, caused by acts or omissions of any person (whether one of the Employees or not) or acts or omissions in which such person is concerned or implicated, or (d) any loss or losses with respect to any one casualty or event, is limited to the sum above stated in the opening paragraph of this bond irrespective of the total amount of such loss or losses.

Non-accumulation of Liability

Section 7. Regardless of the number of years this bond shall continued in force and the number of premiums which shall be payable or paid, the liability of the Underwriter under this bond with respect to any loss or losses specified in the PROVIDED clause of Section 6 of this bond shall not be cumulative in amounts from year to year or from period to period.

Limit of Liability Under This Bond and Prior Insurance

Section 8. With respect to loss or losses set forth in sub-section (c) of the PROVIDED clause of Section 6 of this bond which occur partly during the period of this bond and partly during the period of other bonds or policies issued by the Underwriter to the Insured or to any predecessor in interest of the Insured and terminated or canceled or allowed to expire and in which the period for discovery has not expired at the time any such loss or losses thereunder are discovered, the total liability of the Underwriter under this bond and under such other bonds or policies shall not exceed, in the aggregate, the amount carried hereunder on such loss or losses or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss or losses, if the latter amount by the larger.

Other Insurance or Indemnity

Section 9. If the Insured carries or holds any other insurance or indemnity covering any loss or losses covered by this bond, the Underwriter shall be liable hereunder only for that part of such loss or losses which is in excess of the amount recoverable or recovered from such other insurance or indemnity. In no event shall the Underwriter be liable for more than the amount of the coverage of this bond applicable to such loss or losses; subject, nevertheless, to Section 6 of this bond.

Termination

Section 10. This bond shall terminate in its entirety—(a) at noon upon the effective date specified in a written notice served by the Underwriter upon the Insured, or sent by mail, and such date, if the notice be served, shall be not less than thirty days after such service, or, if sent by mail, not less than thirty-five days after the date of mailing, or (b) upon the receipt by the Underwriter of a written request from the Insured to terminate this bond, or (c) immediately upon the taking over of the Insured by a receiver of other liquidator or by State or Federal officials, or (d) immediately upon the taking over of the Insured by another firm. The mailing of notice by the Underwriter, as aforesaid, to the Insured at its principal office, shall be sufficient proof of notice. The Underwriter, on request, shall refund to the Insured the unearned premium computed pro rata if this bond be terminated at the instance of the Underwriter of if terminated as provided in sub-section (c) or (d) of this paragraph and at short rates if terminated or reduced at the instance of the Insured.

This bond shall terminate as to any Employee—(a) immediately upon discovery by the Insured of any dishonest or fraudulent act on the part of such Employee, without prejudice to the loss of any Property then in transit in the custody of such Employee, or (b) at noon upon the effective date specified in a written notice served upon the Insured or sent by mail, and such date, if the notice be served, shall be not less than fifteen days after such service, or, if sent by mail, not less than twenty days after the date of mailing. The mailing by the Underwriter of notice, as aforesaid, to the Insured at its principal office shall be sufficient proof of notice.

RIDERS

Section 11. The liability of the Underwriter hereunder is subject to the terms and conditions of the following Riders attached hereto: SR 5276; SF 5384; SR 5408a; SR 5463a; SR 5512b; SR 5568; SR 5809

The Insured by the acceptance of this bond, gives notice to the Underwriter terminating or canceling prior bond(s) No(s). , such termination or cancelation to be effective as of the time this bond becomes effective.

Signed, sealed and dated October 15, 1966

THE ÆTNA CASUALTY AND SURETY COMPANY

By: W. A. Michener

W. A. Michener

Attorney-In-Fact

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Attachment A — Original Bond annexed to Complaint.

SHORT RATE CANCELATION TABLES
Short Rate Table For One Year

Days Bond in Force	Percent of Ann. Prem. to be charged	Days Bond in Force	Percent of Ann. Prem. to be charged	Days Bond in Force	Percent of Ann. Prem. to be charged
1	5%	99-102	38%	224-228	70%
2	6	103-105	39	229-232	71
3- 4	7	106-109	40	233-237	72
5- 6	8	110-113	41	238-241	73
7- 8	9	114-116	42	242-246	74
9-10	10	117-120	43	(8 mos.)	
11-12	11	121-124	44	247-250	75
13-14	12	(4 mos.)		251-255	76
15-16	13	125-127	45	256-260	77
17-18	14	128-131	46	261-264	78
19-20	15	132-135	47	265-269	79
21-22	16	136-138	48	270-273	80
23-25	17	139-142	49	(9 mos.)	
26-29	18	143-146	50	274-278	81
30-32	19	147-149	51	279-282	82
(1 mo.)		150-153	52	283-287	83
33-36	20	(5 mos.)		288-291	84
37-40	21	154-156	53	292-296	85
41-43	22	157-160	54	297-301	86
44-47	23	161-164	55	302-305	87
48-51	24	165-167	56	(10 mos.)	
52-54	25	168-171	57	306-310	88
55-58	26	172-175	58	311-314	89
59-62	27	176-178	59	315-319	90
(2 mos.)		179-182	60	320-323	91
63-65	28	(6 mos.)		324-328	92
66-69	29	183-187	61	329-332	93
70-73	30	188-191	62	333-337	94
74-76	31	192-196	63	(11 mos.)	
77-80	32	197-200	64	338-342	95
81-83	33	201-205	65	343-346	96
84-87	34	206-209	66	347-351	97
88-91	35	210-214	67	325-355	98
(3 mos.)		(7 mos.)		356-360	99
92-94	36	215-218	68	361-365	100
95-98	37	219-223	69	(12 mos.)	

FOR TERM OF THREE YEARS

Time Days	Percent of Premium to be Charged: Paid in Advance	Percent of Premium to be Charged: Installment Basis	Time Days	Percent fo Premium to be Charged: Paid in Advance	Percent of Premium to be Charged: Installment Basis
365	40.0000%	38.0953%	730	70.0030%	69.0473%
396	42.5482	40.7241	761	72.3512	71.6761
424	44.8498	43.0985	789	74.8528	74.0505
455	47.3980	45.7273	820	77.4010	76.6793
485	49.8640	48.2713	850	79.8670	79.2233
516	52.4122	50.9001	881	82.4152	81.8521
546	54.8782	53.4441	911	84.8812	84.3961
577	57.4264	56.0729	942	87.4294	87.0249
608	59.9746	53.7017	973	89.9776	89.6537
638	62.4406	61.2457	1003	92.4436	92.1977
669	64.9888	63.8745	1033	94.9096	94.7417
699	67.4548	66.4185	1064	97.4578	97.3705

For each intermediate day not included in the above table, add to the appropriate percentages above, before applying to three year premium, the following:

(a) .0822%, when premium is on a "Paid in Advance" basis.
(b) .0848%, when premium is on "Installment" basis.

The foregoing table cannot be used on term bonds that do not have the same rate or premium factors throughout the full term. In such case the earned premium shall be arrived at as follows:

1. Determine full annual premium as for a bond written for a term of one year.
2. Deduct such premium from the full bond premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the bond has been in force to the length of time beyond one year for which the bond was originally written.
3. Add premium produced in accordance with items (1) and (2) to obtain earned premium during full period bond has been in force.

Note: On term bonds in force for 12 months or less, apply the standard short rate table for one year to a full annual premium determined as for a bond written for a term of one year.

Printed in U.S.A.

BROKERS BLANKET BOND
Standard Form No. 14

The Ætna Casualty and Surety Company

HARTFORD • CONNECTICUT

Bond No. 45 F 1259 BC

To

PAUL R. DEAN & CO., INC.

Date October 15, 1966

Attachment B – Renewal Bond annexed to Complaint.

Aetna LIFE & CASUALTY

STOCKBROKERS BLANKET BOND
Standard Form No. 14, Revised to September, 1970

THE ÆTNA CASUALTY AND SURETY COMPANY
Hartford, Connecticut 06115
(A Stock Company, herein called the Underwriter)

Bond No. 15 F 1526 BCA

DECLARATIONS

Item 1. Name of Insured (herein called Insured): PAUL R. DEAN & CO., INC.

Principal Address: 14 Franklin Street (NO.) (STREET) Rochester (CITY) New York (STATE)

Item 2. Bond Period: from noon on October 15, 1971 (MONTH, DAY, YEAR) to noon on the effective date of the termination or cancellation of this bond, standard time at the Principal Address as to each of said dates

Item 3. Limit of Liability —
Subject to Section 7 hereof, the Limit of Liability is $ 250,000.00
Provided, however, that if any amounts are inserted below opposite specified Insuring Agreements or Coverage, such amounts shall be part of and not in addition to such Limit of Liability.
Amount applicable to:

Insuring Agreement (D)—Forgery or Alteration	$ Not Covered
Insuring Agreement (E)—Securities	$ Not Covered
Misplacement, Mysterious Unexplainable Disappearance Coverage in Insuring Agreement (B)	$ Not Covered

(Insert amount of Insuring Agreement or Coverage, or if an Insuring Agreement or Coverage is to be deleted, insert "Not Covered")

If "Not Covered" is inserted above opposite any specified Insuring Agreement or Coverage, such Insuring Agreement or Coverage and any other reference thereto in this bond shall be deemed to be deleted therefrom.

Item 4. Offices Covered —
All the Insured's offices in existence at the time this bond becomes effective are covered under this bond except the offices located as follows:

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Item 5. The liability of the Underwriter is subject to the terms of the following riders attached hereto: SR 5576a, SR 5876a, Special Rider No. 1

Item 6. The Insured by the acceptance of this bond gives notice to the Underwriter terminating or canceling prior bond(s) or policy(ies) No.(s) 15 F 1259 BC
such termination or cancellation to be effective as of the time this bond becomes effective.

Signed, sealed and dated (enter below)
March 2, 1972

THE ÆTNA CASUALTY AND SURETY COMPANY

By D. J. Robinson
D. J. Robinson
Attorney-in-Fact

TSB 5062a
(F-370-FI 9-70)

CAT. 226254
Printed in U.S.A.

Attachment "B"

Attachment B — Renewal Bond annexed to Complaint.

The Underwriter, in consideration of an agreed premium, and subject to the Declarations made a part hereof, the General Agreements, Conditions and Limitations and other terms of this bond, agrees with the Insured, in accordance with the Insuring Agreements hereof to which an amount of insurance is applicable as set forth in Item 3 of the Declarations and with respect to loss sustained by the Insured at any time but discovered during the Bond Period, to indemnify and hold harmless the Insured for:

INSURING AGREEMENTS

FIDELITY

(A) Loss through any dishonest or fraudulent act of any of the Employees, committed anywhere and whether committed alone or in collusion with others, including loss, through any such act of any of the Employees, of Property held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor.

ON PREMISES

(B) Loss of Property (occurring with or without negligence or violence) through robbery, burglary, common-law or statutory larceny, theft, hold-up, or other fraudulent means, misplacement, mysterious unexplainable disappearance, damage thereto or destruction thereof, abstraction or removal from the possession, custody or control of the Insured, and loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of Property, while the Property is (or is supposed to be) lodged or deposited within any offices or premises located anywhere, except in an office listed in Item 4 of the Declarations or amendment thereof or in the mail or with a carrier for hire, other than an armored motor vehicle company, for the purpose of transportation.

Offices and Equipment

(a) Loss of, or damage to, furnishings, fixtures, stationery, supplies or equipment, within any of the Insured's offices covered under this bond caused by larceny or theft in, or by burglary, robbery or hold-up of such office, or attempt thereat, or by vandalism or malicious mischief, or (b) loss through damage to any such office by larceny or theft in, or by burglary, robbery or hold-up of such office or attempt thereat, or to the interior of any such office by vandalism or malicious mischief provided, in any event, that the Insured is the owner of such offices, furnishings, fixtures, stationery, supplies or equipment or is liable for such loss or damage,—always excepting, however, all loss or damage through fire.

IN TRANSIT

(C) Loss of Property (occurring with or without negligence or violence) through robbery, common-law or statutory larceny, theft, hold-up, misplacement, mysterious unexplainable disappearance, being lost or otherwise made away with, damage thereto or destruction thereof, and loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of Property, while the Property is in transit anywhere in the custody of any person or persons acting as messenger, except while in the mail or with a carrier for hire, other than an armored motor vehicle company, for the purpose of transportation, such transit to begin immediately upon receipt of such Property by the transporting person or persons, and to end immediately upon delivery thereof at destination.

FORGERY OR ALTERATION

(D) Loss through FORGERY OR ALTERATION of, on or in any bills of exchange, checks, drafts, acceptances, certificates of deposit, promissory notes, or other written promises, orders or directions to pay sums certain in money, due bills, money orders, warrants, orders upon public treasuries, letters of credit, written instructions or advices directed to the Insured, authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instructions or advices purport to have been signed or endorsed by any customer of the Insured or by any banking institution or stockbroker but which instructions or advices either bear the forged signature or endorsement or have been altered without the knowledge and consent of such customer, banking institution or stockbroker, withdrawal orders or receipts for the withdrawal of funds or Property, or receipts or certificates of deposit for Property and bearing the name of the Insured as issuer, excluding, however, coupon and serial notes, bonds, scrip, debentures and obligations of a similar nature, whether registered or unregistered, and coupons attached thereto or detached therefrom.

Any check or draft (a) made payable to a fictitious payee and endorsed in the name of such fictitious payee or (b) procured in a face to face transaction with the maker or drawer thereof or with one acting as agent of such maker or drawer by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one impersonated, shall be deemed to be forged as to such endorsement.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

SECURITIES

(E) Loss sustained by the Insured, including loss sustained by reason of liability imposed upon the Insured by law or by the constitution, rules or regulations of any Stock Exchange of which the Insured is a member or which would have been imposed upon the Insured by the constitution, rules or regulations of any Stock Exchange if the Insured had been a member thereof,

(1) through the Insured's having, in good faith and in the course of business, whether for its own account or for the account of others, in any representative, fiduciary, agency or any other capacity, either gratuitously or otherwise, purchased or otherwise acquired, accepted or received, or sold or delivered, or given any value, extended any credit or assumed any liability, on the faith of, or otherwise acted upon, any securities, documents or other written instruments which prove to have been

(a) counterfeited or forged as to the signature of any maker, drawer, issuer, endorser, assignor, lessee, transfer agent or registrar, acceptor, surety or guarantor or as to the signature of any person signing in any other capacity, or

(b) raised or otherwise altered or lost or stolen, or

(2) through the Insured's having, in good faith and in the course of business, guaranteed in writing or witnessed any signatures, whether for valuable consideration or not and whether or not such guaranteeing or witnessing is ultra vires the Insured, upon any transfers, assignments, bills of sale, powers of attorney, guarantees, endorsements or other obligations upon or in connection with any securities, documents or other written instruments and which pass or purport to pass title to such securities, documents or other written instruments; EXCLUDING, in any event, loss through FORGERY OR ALTERATION of, on or in any bills of exchange, checks, drafts, acceptances, certificates of deposit, promissory notes, or other written promises, orders or directions to pay sums certain in money, due bills, money orders, warrants, orders upon public treasuries, letters of credit, written instructions or advices directed to the Insured, authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instructions or advices purport to have been signed or endorsed by any customer of the Insured or by any banking institution or stockbroker but which instructions or advices either bear the forged signature or endorsement or have been altered without the knowledge and consent of such customer, banking institution or stockbroker, withdrawal orders or receipts for the withdrawal of funds or Property, or receipts or certificates of deposit for Property and bearing the name of the Insured as issuer.

Securities, documents or other written instruments shall be deemed to mean original (including original counterparts) negotiable or non-negotiable agreements in writing having value which value is, in the ordinary course of business, transferable by delivery of such agreements with any necessary endorsement or assignment.

The word "counterfeited" as used in this Insuring Agreement shall be deemed to mean only an imitation of any such security, document or other written instrument which is intended to deceive and to be taken for an original.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

COUNTERFEIT CURRENCY

(F) Loss through the receipt by the Insured, in good faith, of any counterfeited or altered paper currencies or coin of the United States of America or Canada issued or purporting to have been issued by the United States of America or Canada or issued pursuant to a United States of America or Canadian Statute for use as currency.

GENERAL AGREEMENTS

ADDITIONAL OFFICES OR EMPLOYEES—CONSOLIDATION OR MERGER

A. If the Insured shall, while this bond is in force, establish any additional office or offices, such office or offices shall be automatically covered hereunder from the dates of their establishment, respectively. No notice to the Underwriter of an increase during any premium period in the number of offices or in the number of Employees at any of the offices covered hereunder need be given and no additional premium need be paid for the remainder of such premium period, unless such increase shall result from the Insured's consolidation or merger with, or purchase of assets of, another firm.

WARRANTY

B. No statement made by or on behalf of the Insured, whether contained in the application or otherwise, shall be deemed to be a warranty of anything except that it is true to the best of the knowledge and belief of the person making the statement.

COURT COSTS AND ATTORNEYS' FEES

(Applicable to all Insuring Agreements now or hereafter forming part of this bond)

C. The Underwriter will indemnify the Insured against court costs and reasonable attorneys' fees incurred and paid by the Insured in

Attachment B — Renewal Bond annexed to Complaint.

RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 14, No. 45 F 1526 BCA

in favor of PAUL R. DEAN & CO., INC.

It is agreed that:

1. The attached bond is hereby amended by deleting sub-section (i) of Section 2 and by substituting in lieu thereof the following:

> "(i) loss resulting from trading, with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, and notwithstanding any act or omission on the part of any Employee in connection with any account relating to such trading, indebtedness, or balance. This sub-section shall not apply to Insuring Agreement (D) or (E) if coverage is carried thereunder."

2. This rider applies to loss sustained at any time but discovered after noon on October 15, 1971 standard time as specified in the attached bond.

Accepted:

DUPLICATE COPY

SPECIMEN COPY

DELETE TRADING LOSS COVERAGE — DISCOVERY FORM
FOR USE WITH BLANKET BOND, STANDARD FORM NO. 14, "DISCOVERY" FORM, TO DELETE TRADING LOSS COVERAGE.
REVISED TO SEPTEMBER, 1970.
SR 5576a Printed in U.S.A.

Attachment B — Renewal Bond annexed to Complaint.

RIDER

14 45 F 1526 ECA

To be attached to and form part of Blanket Bond, Standard Form No , No

PAUL R. DEAN & CO., INC.

in favor of

It is agreed that

1. The attached bond is amended

(a) by deleting the second paragraph of subsection (a) of Section 1,

(b) by deleting subsection $\binom{(j)}{(k)}$ of Section 2, and

(c) by deleting Section 3.

October 15, 1971

2. This rider applies to loss sustained at any time but discovered after noon on standard time as specified in the attached bond.

Accepted:

DUPLICATE COPY

SPECIMEN COPY

DELETE EDP COVERAGE — DISCOVERY FORM

FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 14, 22 AND 24, "DISCOVERY" FORMS, TO DELETE ELECTRONIC DATA PROCESSING COVERAGE

REVISED TO SEPTEMBER, 1970.

SR 5876a Printed in U.S.A.

Attachment B – Renewal Bond
annexed to Complaint.

SPECIAL RIDER

To be attached to and form a part of Blanket Bond, Standard Form No. 14, No. 45 F 1526 BCA

in favor of PAUL H. DEAN & CO., INC.

and dated October 15, 1971

It is agreed that:

1. Anything in the attached bond to the contrary notwithstanding, the attached bond does not cover (a) the loss of any security endorsed so as to render it negotiable unless such loss shall be sustained within thirty (30) minutes after receipt or within thirty (30) minutes prior to scheduled delivery or (b) the loss of any bearer instruments while retained on your premises overnight.

2. The attached bond shall be subject to all its agreements, limitations and conditions execpt as herein expressly modified.

3. This rider shall become effective as of noon on the October 15, day of 19 .

DUPLICATE COPY

SPECIMEN COPY

Attachment B — Renewal Bond annexed to Complaint.

defending any suit or legal proceeding brought against the Insured to enforce the Insured's liability or alleged liability on account of any loss, claim or damage which, if established against the Insured, would constitute a valid and collectible loss sustained by the Insured under the terms of this bond. In the event such loss, claim or damage is subject to a Deductible Amount or is in excess of the amount collectible under the terms of this bond, such court costs and attorneys' fees shall be pro rated. Such indemnity shall be in addition to the amount of this bond. In consideration of such indemnity, the Insured shall promptly give notice to the Underwriter of the institution of any such suit or legal proceeding; at the request of the Underwriter shall furnish it with copies of all pleadings and other papers therein; and at the Underwriter's election shall permit the Underwriter to conduct the defense of such suit or legal proceeding, in the Insured's name, through attorneys of the Underwriter's own selection. In the event of such election by the Underwriter, the Insured shall give all reasonable information and assistance, other than pecuniary, which the Underwriter shall deem necessary to the proper defense of such suit or legal proceeding.

THE FOREGOING INSURING AGREEMENTS AND GENERAL AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

DEFINITIONS

Section 1. The following terms, as used in this bond, shall have the respective meanings stated in this Section:

(a) **"Employee"** means one or more of the Insured's officers, clerks and other employees while employed in, at or by any of the Insured's offices while covered under this bond and one or more of the officers, clerks and other employees of any predecessor of the Insured whose principal assets are acquired by the Insured by consolidation or merger with, or purchase of assets of, such predecessor, and attorneys retained by the Insured to perform legal services for the Insured and the employees of such attorneys while such attorneys or the employees of such attorneys are performing such services for the Insured, and Guest Students pursuing their studies or duties in any of the Insured's offices.

Each natural person, partnership or corporation authorized by written agreement with the Insured to perform services as electronic data processor of checks or other accounting records of the Insured, herein called Processor, shall, while performing such services, be deemed to be an Employee as defined in the preceding paragraph. Each such Processor and the partners, officers and employees of such Processor shall, collectively, be deemed to be one Employee for all the purposes of this bond; excepting, however, the second paragraph of Section 11.

(b) **"Property"** means money (i.e., currency, coin, bank notes, Federal Reserve notes), postage and revenue stamps, U.S. Savings Stamps, bullion, precious metals of all kinds and in any form and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, bonds, securities, evidences of debts, debentures, scrip, certificates, interim receipts, warrants, rights, puts, calls, straddles, spreads, transfers, coupons, drafts, bills of exchange, acceptances, notes, checks, withdrawal orders, money orders, warehouse receipts, bills of lading, conditional sales contracts, abstracts of title, insurance policies, deeds, mortgages upon real estate and/or chattels and upon interests therein, and assignments of such policies, mortgages and instruments, and other valuable papers, including books of account and other records used by the Insured in the conduct of its business, and all other instruments similar to or in the nature of the foregoing (but excluding all data processing records) in which the Insured has an interest or in which the Insured acquired or should have acquired an interest by reason of a predecessor's declared financial condition at the time of the Insured's consolidation or merger with, or purchase of the principal assets of, such predecessor or which are held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor.

EXCLUSIONS

Section 2. THIS BOND DOES NOT COVER:

(a) loss effected directly or indirectly by means of forgery or alteration of, on or in any instrument, except when covered by Insuring Agreement (A), (D), (E) or (F).

(b) loss due to riot or civil commotion outside the United States of America and Canada; or loss due to military, naval or usurped power, war or insurrection unless such loss occurs in transit in the circumstances recited in Insuring Agreement (C), and unless, when such transit was initiated, there was no knowledge of such riot, civil commotion, military, naval or usurped power, war or insurrection on the part of any person acting for the Insured in initiating such transit.

(c) loss, in time of peace or war, directly or indirectly caused by or resulting from the effects of nuclear fission or fusion or radioactivity; provided, however, that this paragraph shall not apply to loss resulting from industrial uses of nuclear energy.

(d) loss resulting from any act or acts of any person who is a member of the Board of Directors of the Insured or a member of any equivalent body by whatsoever name known unless such person is also an Employee or an elected official of the Insured in some other capacity, nor, in any event, loss resulting from the act or acts of any person while acting in the capacity of a member of such Board or equivalent body; or loss resulting from any dishonest or fraudulent act or acts of any partner of the Insured.

(e) loss resulting from the complete or partial non-payment of, or default upon, any loan or transaction in the nature of, or amounting to, a loan made by or obtained from the Insured or any of its partners, directors or Employees, whether authorized or unauthorized and whether procured in good faith or through trick, artifice, fraud or false pretenses, unless such loss is covered under Insuring Agreement (A), (D) or (E).

(f) loss resulting from any violation by the Insured or by any Employee

(a) of law regulating (1) the issuance, purchase or sale of securities, (2) securities transactions upon Security Exchanges or over the counter market, (3) Investment Companies, or (4) Investment Advisers, or

(b) of any rule or regulation made pursuant to any such law,

unless such loss, in the absence of such laws, rules or regulations, would be covered under Insuring Agreement (A).

(g) loss of Property contained in customers' safe deposit boxes unless such loss be sustained through any dishonest or fraudulent act of an Employee in such circumstances as shall make the Insured legally liable therefor.

(h) loss of Property or loss of privileges through the misplacement or loss of Property as set forth in Insuring Agreement (B) or (C) while the Property is in the custody of any armored motor vehicle company, unless such loss shall be in excess of the amount recovered or received by the Insured under (a) the Insured's contract with said armored motor vehicle company, (b) insurance carried by said armored motor vehicle company for the benefit of users of its service, and (c) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service, and then this bond shall cover only such excess.

(i) loss resulting from trading, with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, except when covered under Insuring Agreement (A), (D) or (E).

(j) any person, who is a partner, officer or employee of any Processor covered under this bond, from and after the time that the Insured or any partner or officer thereof not in collusion with such person shall have knowledge or information that such person has committed any fraudulent or dishonest act in the service of the Insured or otherwise, whether such act be committed before or after the time this bond is effective.

ASSIGNMENT OF RIGHTS

Section 3. This bond does not afford coverage in favor of any Processor, as aforesaid, and upon payment to the Insured by the Underwriter on account of any loss through fraudulent or dishonest acts committed by any of the partners, officers or employees of such Processor, whether acting alone or in collusion with others, an assignment of such of the Insured's rights and causes of action as it may have against such Processor by reason of such acts so committed shall, to the extent of such payment, be given by the Insured to the Underwriter, and the Insured shall execute all papers necessary to secure to the Underwriter the rights herein provided for.

LOSS—NOTICE—PROOF—LEGAL PROCEEDINGS

Section 4. This bond is for the use and benefit only of the Insured named in the Declarations and the Underwriter shall not be liable hereunder for loss sustained by anyone other than the Insured unless the Insured, in its sole discretion and at its option, shall include such loss in the Insured's proof of loss. At the earliest practicable moment after discovery of any loss hereunder the Insured shall give the Underwriter written notice thereof and shall also within six months after such discovery furnish to the Underwriter affirmative proof of loss with full particulars. If claim is made under this bond for loss of securities, the Underwriter shall not be liable unless each of such securities is identified in such proof of loss by certificate or bond number. The Underwriter shall have thirty days after notice and proof of loss within which to investigate the claim, but where the loss is clear and undisputed, settlement shall be made within forty-eight hours; and this shall apply notwithstanding the loss is made up wholly or in part of securities of which duplicates may be obtained. Legal proceedings for recovery of any loss hereunder shall not be brought prior to the expiration of sixty days after such proof of loss is filed with the Underwriter nor after the expiration of twenty-four months from the discovery of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in General Agreement C or to recover attorneys' fees paid in any such suit, shall be begun within twenty-four months from the date upon which the judgment in such suit shall become final. If any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

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VALUATION

Section 5. Securities

The value of any securities, for the loss of which claim shall be made under this bond, shall be determined by the cost of an equivalent amount of securities of the same issue purchased by or at the instance of the Underwriter; provided, however, that if, prior to such purchase by or at the instance of the Underwriter, the Insured shall be compelled, by the demands of a third party or by market rules, to assume the cost of an equivalent amount of securities of the same issue, and shall notify the Underwriter, in writing, of such compulsion, such cost shall be taken as the value of such securities. The amount of the Insured's claim on account of any such loss shall be deemed to be the cost of such securities as herein determined. In case of a loss of subscription, conversion,

Attachment B — Renewal Bond annexed to Complaint.

redemption or deposit privileges, as above set forth, the amount of such loss shall be the value of such privileges immediately preceding the expiration thereof. If such securities cannot be replaced or have no quoted market value, or if such privileges have no quoted market value, their value shall be determined by agreement or arbitration.

Any loss under this bond of currency or funds of any country shall be paid in the currency or funds of such country or, at the option of the Insured, in the United States of America dollar equivalent thereof determined by the rate of exchange at the time of the payment of such loss. Any other loss sustained at any of the Insured's offices covered under this bond and payable in money shall be paid in the currency or funds of the country in which such office is located or, at the option of the Insured, in the United States of America dollar equivalent thereof determined by the rate of exchange at the time of the payment of such loss.

Loss of Securities

If the applicable coverage of this bond is not sufficient in amount to indemnify the Insured in full for the loss of securities for which claim is made hereunder, the liability of the Underwriter under this bond is limited to the payment for, or the duplication of, so much of such securities as has a value equal to the amount of such applicable coverage and in such event, the Insured shall assign to the Underwriter all its rights, title and interest in and to those securities for which such payment or duplication is made by the Underwriter.

Books of Account and Other Records

In case of loss of, or damage to, Property consisting of books of account or other records used by the Insured in the conduct of its business, the Underwriter shall be liable under this bond only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the Insured in order to reproduce such books and other records.

Property other than Securities or Records

In case of loss of, or damage to, any Property other than securities, books of account or other records as aforesaid or damage to the Insured's offices covered under this bond, or loss of, or damage to, the furnishings, fixtures, stationery, supplies and equipment therein, the Underwriter shall not be liable for more than the actual cash value of such Property, or of such furnishings, fixtures, stationery, supplies and equipment, or for more than the actual cost of repairing such Property or offices, furnishings, fixtures, stationery, supplies and equipment, or of replacing same with property or material of like quality and value. The Underwriter may, at its election, pay such actual cash value, or make such repairs or replacements. If the Underwriter and the Insured cannot agree upon such cash value or such cost of repairs or replacements, such cash value or such cost shall be determined by arbitration.

SALVAGE

Section 6. If the Insured shall sustain any loss covered by this bond which exceeds the amount of coverage provided by this bond plus the Deductible Amount, if any, applicable to such loss, the Insured shall be entitled to all recoveries made after payment by the Underwriter of loss covered by this bond, except recoveries on account of loss of securities as set forth in the third paragraph of Section 5 or recoveries from suretyship, insurance, reinsurance, security and indemnity taken by or for the benefit of the Underwriter, by whomsoever made, less the actual cost of effecting such recoveries, until reimbursed for such excess loss and any remainder, or, if there be no such excess loss, any such recoveries shall be applied first in reimbursement of the Underwriter and thereafter in reimbursement of the Insured for that part of such loss within such Deductible Amount. The Insured shall execute all necessary papers to secure to the Underwriter the rights herein provided for.

LIMIT OF LIABILITY

Section 7. Payment of loss under this bond shall not reduce the liability of the Underwriter under this bond for other losses whenever sustained; PROVIDED, however, that the total liability of the Underwriter under this bond on account of

(a) loss caused by any one act of burglary, robbery or hold-up, or attempt thereat, in which no Employee is concerned or implicated, or

(b) loss with respect to any one unintentional or negligent act or omission on the part of any person (whether one of the Employees or not) resulting in damage to or destruction or misplacement of Property, or

(c) loss other than those specified in (a) and (b) preceding, caused by all acts or omissions by any person (whether one of the Employees or not) or all acts or omissions in which such person is concerned or implicated, or

(d) loss other than those specified in (a), (b) and (c) preceding, resulting from any one casualty or event

is limited to the Limit of Liability stated in Item 3 of the Declarations of this bond or amendment thereof or to the amount of the applicable coverage of this bond if such amount be smaller, irrespective of the total amount of such loss.

NON-ACCUMULATION OF LIABILITY

Section 8. Regardless of the number of years this bond shall continue in force and the number of premiums which shall be payable or paid, the liability of the Underwriter under this bond with respect to any loss specified in the PROVIDED clause of Section 7 of this bond shall not be cumulative in amounts from year to year or from period to period.

LIMIT OF LIABILITY UNDER THIS BOND AND PRIOR INSURANCE

Section 9. With respect to any loss set forth in subsection (c) of the PROVIDED clause of Section 7 of this bond which is recoverable or recovered in whole or in part under any other bonds or policies issued by the Underwriter to the Insured or to any predecessor in interest of the Insured and terminated or canceled or allowed to expire and in which the period for discovery has not expired at the time any such loss thereunder is discovered, the total liability of the Underwriter under this bond and under such other bonds or policies shall not exceed, in the aggregate, the amount carried hereunder on such loss or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss if the latter amount be the larger.

If the coverage of this bond supersedes in whole or in part the coverage of any other bond or policy of insurance issued by an Insurer other than the Underwriter and terminated, canceled or allowed to expire, the Underwriter, with respect to any loss sustained prior to such termination, cancellation or expiration and discovered within the period permitted under such other bond or policy for the discovery of loss thereunder, shall be liable under this bond only for that part of such loss covered by this bond as is in excess of the amount recoverable or recovered on account of such loss under such other bond or policy, anything to the contrary in such other bond or policy notwithstanding.

OTHER INSURANCE OR INDEMNITY

Section 10. If the Insured carries or holds any other insurance or indemnity covering any loss covered by this bond, the Underwriter shall be liable hereunder only for that part of such loss which is in excess of the amount recoverable or recovered from such other insurance or indemnity. In no event shall the Underwriter be liable for more than the amount of the coverage of this bond applicable to such loss; subject, nevertheless, to Section 7 of this bond.

TERMINATION OR CANCELLATION

Section 11. This bond shall be deemed terminated or canceled as an entirety—(a) thirty days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond, or (b) immediately upon the receipt by the Underwriter of a written request from the Insured to terminate or cancel this bond, or (c) immediately upon the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, or (d) immediately upon the taking over of the Insured by another business entity. The Underwriter shall, on request, refund to the Insured the unearned premium, computed pro rata, if this bond be terminated or canceled or reduced by notice from, or at the instance of, the Underwriter, or if terminated or canceled as provided in sub-section (c) or (d) of this paragraph. The Underwriter shall refund to the Insured the unearned premium computed at short rates if this bond be terminated or canceled or reduced by notice from, or at the instance of, the Insured.

This bond shall be deemed terminated or canceled as to any Employee —(a) as soon as the Insured shall learn of any dishonest or fraudulent act on the part of such Employee, without prejudice to the loss of any Property then in transit in the custody of such Employee, or (b) fifteen days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond as to such Employee.

RIGHTS AFTER TERMINATION OR CANCELLATION

Section 12. At any time prior to the termination or cancellation of this bond as an entirety, whether by the Insured or the Underwriter, the Insured may give to the Underwriter notice that it desires under this bond an additional period of twelve months within which to discover loss sustained by the Insured prior to the effective date of such termination or cancellation and shall pay an additional premium therefor. If this bond is terminated or canceled as an entirety by reason of the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, such receiver or other liquidator or State or Federal officials shall have the rights of the Insured and be subject to the same limitations as set forth in this paragraph provided that such rights are exercised by notice to the Underwriter within thirty days after such Insured is taken over by such receiver or other liquidator or State or Federal officials and provided, further, that such Insured has not previously exercised such rights. Upon receipt of such notice from the Insured or from such receiver or other liquidator or State or Federal officials, the Underwriter shall give its written consent thereto; provided, however, that such additional period of time shall terminate forthwith on the effective date of any other insurance.

(a) obtained by the Insured or its successors in business, other than such receiver or other liquidator or State or Federal officials, replacing in whole or in part the insurance afforded by this bond, whether or not such other insurance provides coverage for loss sustained prior to its effective date, or

(b) obtained by such receiver, liquidator or State or Federal officials replacing in whole or in part the insurance afforded by this bond but only if such other insurance provides coverage to some extent for loss sustained prior to its effective date, and

in the event that such additional period of time is terminated as herein provided, the Underwriter shall refund any unearned premium.

In witness whereof, the Underwriter has caused this bond to be executed on the Declarations page.

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ANSWER.

U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff,

-vs-

AETNA CASUALTY & SURETY COMPANY,

Defendant.

ANSWER

Civil Action
#74-127

The Defendant, Aetna Casualty and Surety Company, hereinafter referred to as "Aetna" for its answer to the Plaintiff's Complaint herein, alleges as follows:

1. Admits the allegations contained in paragraphs of Plaintiff's Complaint marked "1" and "11".

2. Denies that it has knowledge or information sufficient to form a belief as to the allegations contained in paragraphs of Plaintiff's Complaint marked "2", "3", "4" and "5" and, therefore, denies the same.

3. Denies the allegations contained in paragraph of Plaintiff's Complaint marked "6" except that it admits that on or about the 15th day of October, 1966, Aetna executed and delivered a Brokers Blanket Bond to the Bankrupt which Bond Defendant alleges was terminated on October 15, 1971.

4. Denies the allegations contained in paragraph of Plaintiff's Complaint marked "7" except that it admits that on or about the 15th day of October, 1971, a Brokers Blanket Bond was issued by Aetna, a copy of which is annexed to Plaintiff's Complaint marked "Exhibit B".

5. Admits that part of paragraph of Plaintiff's Complaint marked "10" which alleges that Aetna denies any liability to Plaintiff under any bond.

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ANSWER.

6. Denies each and every allegation in Plaintiff's Complaint contained not hereinbefore specifically admitted, controverted or denied.

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

7. That on the 15th day of October, 1971, the Bond referred to in Plaintiff's Complaint as the "original Bond", a copy of which is attached to Plaintiff's Complaint marked "Attachment A", was cancelled and terminated.

FOR FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

8. That on or about the 15th day of October, 1971, the Defendant issued a Brokers Blanket Bond No. 45 F 1526 BCA to Paul R. Dean & Co., Inc., a copy of which is attached to Plaintiff's Complaint and marked "Attachment B".

9. That said Bond is in writing and speaks for itself as to its terms and provisions.

10. That the Plaintiff and its predecessors have failed to comply with the terms and conditions of said Bond and have failed to present to Defendant any evidence of a claim under said Bond.

FOR FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

11. That said Bond provides, among other things, as follows:

> "This Bond is for the use and benefit only of the Insured named in the Declarations and the Underwriter shall not be liable hereunder for loss sustained by anyone other than the Insured unless the Insured, in its sole discretion and at its option, shall include such loss in the Insured's proof of loss. At the earliest practicable moment after discovery of any loss hereunder the Insured shall give the Underwriter written notice thereof and shall also within six months after such discovery furnish to the Underwriter affirmative proof of loss with full particulars."

12. That Plaintiff and its predecessors have failed to comply with said provision and have failed to furnish proof of loss sustained by the insured with full particulars.

13. That Defendant was not given notice by the insured at the earliest practicable moment after discovery of any loss.

FOR FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

14. That at the time Paul R. Dean & Co., Inc., applied for and obtained said Bond from the Defendant, it concealed from the Defendant its true financial situation and all or part of the presently condemned transactions.

15. That such concealment was a fraud on the Defendant which rendered the Bond void.

FOR FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

16. That said Bond provided, among other things, as follows:

> "This Bond shall be deemed terminated or cancelled as to any employee (a) as soon as the Insured shall learn of any dishonest or fraudulent act on the part of such employee."

17. That said Bond terminated immediately when the Insured discovered the first alleged dishonest or fraudulent act on the part of Paul R. Dean.

FOR FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

18. That said Bond provided, among other things, as follows:

> "This Bond does not cover loss resulting from any act or acts of any person who is a member of the Board of Directors of the Insured or a member of any equivalent body by whatsoever name known unless such person is also an Employee or an elected official of the Insured in some other capacity, nor, in any event, loss resulting from the act or acts of any person while acting in the capacity of a member of such Board or equivalent body; or loss resulting from any dishonest or fraudulent act or acts of any partner of the Insured."

19. That any acts claimed as fraudulent or dishonest werea matter of record and were authorized or ratified by the Board of Directors.

20. That the officers of the Insured were its directors.

21. That any act complained of which was done, was the act of the Insured, Paul R. Dean & Co., Inc., done at the direction or with the approval of its controlling authority, and losses, if any, were sustained in carrying on the business of Paul R. Dean & Co., Inc. and none of the alleged losses is a loss within any of the coverages of said Bond.

22. That any acts of Paul R. Dean complained of were the acts of Paul R. Dean & Co., Inc.

FOR FURTHER, SEPARATE AND DISTINCT DEFENSE, THE DEFENDANT FURTHER ALLEGES:

23. That said Bond provides, among other things, as follows:

> "This Bond does not cover loss resulting from trading, with or without the knowledge of the Insured, in the name of the Insured or otherwise."

24. That any loss complained of resulting from trading is not within the coverages of said Bond.

WHEREFORE, the Defendant, The Aetna Casualty and Surety Company, demands judgment dismissing the Plaintiff's Complaint herein as to it, together with the costs and disbursements of this action.

WINCHELL, CONNORS AND CORCORAN
Attorneys for Defendant
Office and Post Office Address
45 Exchange Street
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGHE as Trustee in
Bankruptcy of PAUL R. DEAN & CO. INC.,

Plaintiff

- vs - CIVIL 74-127

AETNA CASUALTY & SURETY COMPANY,

Defendant

Justin L. Vigdor
25 East Main Street
Rochester, N.Y. 14614

Paul J. Suter
45 Exchange Street
Rochester, N.Y. 14614
Attorneys for plaintiff

Winchell, Connors & Corcoran
45 Exchange Street
Rochester, N.Y. 14614
(Richard H. Connors, of counsel)
Attorneys for defendant

This case was tried before the undersigned without a jury on July 7, 8 and 9, 1975.

FINDINGS OF FACT

1. Paul R. Dean & Company is a New York Corporation whose principal business was the dealing in municipal bonds.

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2. The defendant is an insurance company authorized to issue insurance policies in the State of New York including the stockholders blanket bond on which this action is based.

3. The plaintiff was appointed by this court on June 14, 1973 as Trustee in Bankruptcy of the Dean Company. On April 4, 1973 Justin L. Vigdor was named Assignee for the benefit of creditors of the Dean Company.

4. The Dean Company was a closely held corporation. The sole stockholders and directors were Paul R. Dean and John Nichols, each holding fifty percent of the outstanding stock. Dean was president and Nichols was vice-president.

5. Dean had formerly been associated with Bonbright and Company, brokers, specializing in municipal bond transactions. Nichols was a lawyer and for a time had practiced law in Monroe County. In 1958 Nichols discontinued his law practice and became a "private investor".

6. The New York General Municipal Law, Section 106, permits contractors for municipalities or other similar public corporations such as school districts to deposit municipal bonds in lieu of cash retainages, thus permitting them to obtain interest on the retained amounts.

7. Pursuant to that provision, the City of Rochester from June 1970 through April 1973 delivered to the Dean Company in payment for bonds the Dean Company was to buy and

hold pursuant to the above cited section, and contractors with Penfield Central School District delivered over $37,000.00 for the same purpose.

8. On October 15, 1966, Aetna issued to the Dean Company its Brokers Blanket Bond in the amount of $200,000.00. This bond was cancelled as of October 15, 1971 and replaced by Bond Number 45F1526BCA in the amount of $250,000.00. Both bonds provided coverage only for losses discovered during the period of the bond without regard to when the losses were sustained. The bonds were intended to indemnify the Dean Company against losses occasioned by the dishonest, fraudulent or criminal acts of employees. Directors were not employees unless they were also officers or otherwise employed by the company.

9. The bonds provided for termination as to any employee "immediately upon discovery by the insured of any dishonest or fraudulent act on the part of such employee."

10. The bond did not cover "loss resulting from any act or acts of any person who was a member of the Board of Directors of the insured or a member of any equivalent body by whatsoever name known, unless such person was also an employee or an elected official of the insured in some other capacity, nor, in any event, loss resulting from the

act or acts of any person while acting in the capacity of a member of such Board or equivalent body; or loss resulting from any dishonest or fraudulent act or acts of any partner of the insured."

11. The bond did not cover losses resulting from loans obtained from the insured or any of its partners, directors or employees, whether authorized or unauthorized.

12. On April 4, 1973 the Dean Company filed an assignment for the benefit of creditors. On April 30, 1973 a voluntary petition in bankruptcy was filed and the company was declared bankrupt.

13. By its terms, the Bond terminated "immediately upon the taking over of the insured by a receiver or other State or Federal officer."

14. The company's books revealed that as of March 31, 1973, Dean was indebted to the company in the amount of $557,318.73, mostly in the form of loans to Dean by the corporation. As of June 1, 1971 the indebtedness of Dean to the company was $45,041.55.

15. Nichols took no part in the operation of the company. Dean was the sole operating officer. By the admission of Nichols, Dean was the president and it was his company. Nichols had full access to the books of the company, drew checks on the company account, and drew a salary.

16. Both Nichols and Dean borrowed money from the company for their own personal use, including purchasing stock in Sande Broadcasting Company. In 1972 when the Dean Company was in a serious financial state, Dean and Nichols each borrowed $125,000.00 from the Dean Company. The Dean Company loaned an additional $40,000.00 of corporate money to one Sayre to purchase the Sande Broadcasting Company. Over a period of eighteen months $81,500.00 was taken out of the company funds and loaned to Sande Broadcasting Company.

17. During the last two or three years of the company's existence, Nichols came into the company's office more than two or three times a week and on occasion four times a week.

18. The company's books show that on February 29, 1972 the corporation had a deficit of $375,899.00 outstanding loans to Dean of $319,000.00 and to Nichols of $130,000.00, an outstanding loan to Sande Broadcasting Company of $90,000.00, and outstanding loans to Helco Chemical Company of $50,000.00.

19. Prior to the Assignment for the benefit of creditors on April 4, 1973, Nichols had seen only one financial statement of the company, viz, the statement for the 1969 fiscal year. Except for the Sande Broadcasting

Company transaction, Nichols at no other time borrowed money from the company.

20. The corporate books were maintained in a normal, and orderly manner, they were essentially a good set of corporate books. All money transferred from the Dean Company to Dean or Nichols or others was recorded in the company's books.

21. The books of the corporation on W-2 forms disclosed that Nichols was paid $17,000.00 for the 1968 fiscal year; $14,750.00 for the 1969 fiscal year; $17,250.00 for the 1970 fiscal year; $12,000.00 for the 1971 fiscal year; and $25,000.00 for the 1972 fiscal year.

22. The stock in the Sande Broadcasting Company purchased entirely by money borrowed from the Dean Company, was taken in the individual names of Dean and Nichols.

23. The bond provides: "This bond is for the use and benefit only of the insured named in the declarations and the underwriter shall not be liable hereunder for loss sustained by anyone other than the insured unless the insured in its sole discretion and at its option shall include such loss in the insured's proof of loss. At the earliest practicable moment after discovery of any loss hereunder, the insured shall give the underwriter written notice thereof

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and shall also within six months after such discovery furnish to the underwriters affirmative proof of loss with full particulars." No valid proof of loss was ever filed by the insured or by Justin L. Vigdor or by the plaintiff.

CONCLUSIONS OF LAW

1. There was no covered loss within the provisions of the bond. Paul Dean was the president and the sole operating entity of the Dean Company. He was not an employee within the provisions of the bond.

2. Dean's knowledge of any fraud or dishonesty was imputable to the Dean Company.

3. Nichols was either aware of the financial condition of the company, or by his failure, as claimed by him, to make any effort to familiarize himself with the operation of the company, had entrusted the entire operation of the company to Dean. If Nichols was aware of the financial condition of the company, Nichol's knowledge of fraud is imputable to the company. If Nichols abdicated his responsibility as director and entrusted the operation of the company entirely to Dean, knowledge of the fraud by Dean was imputable to the company. Dean and Nichols were the alter ego of the Dean Company. Knowledge of fraud on the part of Dean or Nichols or both, is imputable to the company.

4. The Bond was intended to protect the Dean Company from the fraud of its employees and not to protect creditors from the fraud of the directors and stockholders.

5. Neither the insured nor the plaintiff filed the required proof of loss as required by the bond.

6. The complaint should be dismissed.

IT IS HEREBY ORDERED and ADJUDGED, on the evidence and on the above findings and conclusions, that the action is dismissed with costs to the defendant to be taxed by the Clerk.

HAROLD P. BURKE
United States District Judge

January 28, 1976.

EXHIBIT 17 – Shareholder's Agreement, dated 8-31-66.

AGREEMENT

This Agreement by and between PAUL R. DEAN AND COMPANY, INC. of Rochester, New York, First Party (sometimes called "Corporation"), PAUL R. DEAN of 2583 Turk Hill Road, Victor, New York, Second Party and JOHN NICHOLS of 3901 East Avenue, Syracuse, New York and MORTON B. SMOOKLER of 411 Sycamore Terrace, Syracuse, New York, Third Parties,(said Second and Third Parties sometimes referred to as "Stockholders") WITNESSETH:

WHEREAS Stockholders have formed a Corporation, pursuant to Section 402 of the Business Corporation Law of the State of New York under the name "PAUL R. DEAN AND COMPANY, INC.," and

WHEREAS Stockholders desire to promote their mutual interests and the interest of said Corporation by imposing certain restrictions and obligations on the shares of stock of the Corporation, including the sale or other disposition thereof, and

WHEREAS Second Party is the owner of Forty (40) Shares of the common no par value stock and each of the Third Parties is the owner of thirty (30) Shares thereof, and

WHEREAS the said shares of the Corporation owned by Second and Third Parties constitute all of the issued and outstanding capital stock of the Corporation,

NOW, for good and valuable consideration, receipt whereof by each of the Parties hereto being acknowledged, Parties hereto do covenant and agree as follows:

P-16 Bdl

EXHIBIT 17

EXHIBIT 17 — Shareholder's Agreement, dated 8-31-66.

Restrictions on Stock

1. Except as otherwise provided in the Agreement, no Stockholder shall encumber, sell, transfer or otherwise dispose of legal or equitable ownership of any or all of his stock without the written consent of the other Stockholders and of the Corporation. Corporation shall not issue any additional stock without the consent of the other Stockholders.

Stockholders' Participation in Management

2. The Stockholders, so long as they hold stock in Corporation, agree that each shall vote his stock to provide that each Stockholder shall be elected as a member of the Board of Directors.

Employment by Corporation

3. Each Stockholder shall hold such office in the Corporation, and shall be employed by Corporation with such duties and at such salary, as may be determined by the Board of Directors. Each Stockholder agrees that while he is a Stockholder he will not, without the written consent of the other Stockholders, become interested in any other enterprise, whether incorporated or unincorporated, and whether as employee, stockholder, partner, creditor or otherwise, which is in competition with Corporation; *provided, however,* that this limitation shall not prohibit investment in securities listed on an organized stock or bond exchange.

Price and Terms for Purchase of Stock

4. (a) This Agreement hereinafter provides for circumstances under which there is an offer to sell, or an option to purchase.

(b) The value of each share of stock of the Corporation shall be determined upon the basis of the financial statement at the end of the fiscal year immediately preceding the offer to sell or option to purchase, computed in accordance with sound accounting principles consistent with the accounting principles

applied in keeping the books of the Corporation, and in accordance with the following:

(i) All assets shall be taken at book value.

(ii) Life insurance shall be taken at its cash surrender value. No adjustment will be made with respect to the amount payable after the valuation date by reason of the death of the insured.

(c) The terms of purchase for stock pursuant to this Agreement shall be a down payment in cash at settlement equal to twenty-five (25%) of the total purchase price of all of the stock purchased with the balance represented by negotiable promissory notes of the purchaser and payable (with right of pre-payment) in equal quarter-annual installments over a period of five (5) years from the date of sale. The promissory notes shall bear interest on the unpaid balance at the rate of five (5%) per cent per annum, payable quarter-annually. Any negotiable note executed by Corporation shall be personally endorsed by the remaining Stockholders and by their wives.

Purchase of Stock of Stockholder

5. (a) If a Stockholder desires to sell or transfer his stock he shall first offer all of his stock for sale to Corporation. The said offer shall be made by notice in writing addressed to Corporation, and to the other Stockholders. The price per share for the sale of said stock shall thereupon be determined in the manner provided in paragraph "4". The Corporation shall have the right to accept the aforesaid offer by notice in writing to the offering Stockholder within thirty (30) days after price is so determined.

(b) If Corporation does not accept said offer within the said period, the other Stockholders shall have the option to accept said offer.

Purchase of Stock on Death of Stockholder

6. (a) In the event of the death of Second Party, the value of his stock shall be determined by methods prescribed under paragraph "4", and his heirs, administrators and executors shall be obligated to sell and Corporation shall be obligated to purchase all of his said stock at the price and terms provided in paragraph "4".

(b) Settlement for said purchase shall be made not later than One Hundred and Twenty (120) days (i) after the date of appointment of the executors or administrators of the deceased Stockholder, or (ii) after the date of the determination of the said value, whichever date is later, and shall take place at the principal office of the Corporation during business hours at a time and date within the said One Hundred and Twenty (120) day period fixed by the Corporation, *provided, however,* that if the purchase price of the stock of decedent is greater than the sum of the amount of the surplus of Corporation, and the amount of life insurance (not already reflected in said surplus) received by Corporation by reason of the death of said Stockholder, and if Corporation is prohibited by law from purchasing stock in excess of such sum, then Corporation shall be obligated to purchase so much of the said stock at the price per share as determined under paragraph "4" as equals such sum and the Third Party Stockholders shall thereupon be obligated to purchase, and the executors and administrators of the decedent Second

Party Stockholder shall be obligated to sell to them the remainder of the stock of the deceased Stockholder at the price per share and upon the terms provided in paragraph "4".

(c) In the event of death of a Third Party Stockholder the value of his stock shall be determined by the method prescribed in paragraph "4", his heirs, administrators and executors, however, shall have the right to elect either to retain the stock or to sell it. In the event of retention of said stock, the Estate or the beneficiary of the Estate of the decedent Stockholder shall not have an enforceable right to participate in management on the basis provided in paragraph "2" of this Agreement.

In the event, however, that the Estate or the beneficiary of the Estate of decedent Third Party Stockholder elects to sell the said holdings of stock of the Corporation, the Corporation shall be obligated to purchase all of his said stock at the price and terms provided in paragraph "4". Settlement for the said purchase shall be made consistent with the procedures set forth in paragraphs "4", "5(a)" and "6(b)".

Notices

7. Whenever under this Agreement notice is required to be given, it shall be given in writing and either delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested, and addressed, if to a Stockholder, to the address for such Stockholder set forth above, or if to Corporation, to the address of its principal office. Any party may change his mailing address by serving notice of such change and of such new address in the manner provided for the serving of any other notice.

Assignment

8. This Agreement shall not be assignable by any Party hereto, except with the written consent of all the other Parties.

Changes
Modifications
Waivers
Invalidity

9. No changes or modifications in the terms of this Agreement shall be valid and binding unless the same be by memorandum in writing, duly executed by the Parties hereto. Any Party hereto shall have the right to waive any default by another Party hereto. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the person against whom charged. If any provision of this Agreement or the application of such provision to any person or circumstances shall be held invalid such invalidity shall not affect the other provisions hereof, and the application thereof to any other person or circumstances.

Endorsement of Stock Certificate

10. Each certificate of stock of Corporation shall bear the following statement:

> *This certificate of stock is subject to an Agreement between the Stockholders and the Corporation, a copy of which is on file with the Corporation."*

Arbitration

11. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration as follows: The Party hereto who demands said arbitration shall appoint one arbitrator, the other Parties hereto shall appoint another arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator. The decision of the majority of the three

arbitrators shall be binding upon all parties to this Agreement, and judgment upon the decision rendered by a majority of the arbitrators may be entered in any court having jurisdiction thereof. The costs of the said arbitration shall be borne one-half by the individual demanding arbitration, and one-half by the other responding parties to said arbitration proceeding.

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, administrators, executors, successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement and two (2) duplicate originals thereof, all on the 31 day of August, Nineteen Hundred and Sixty-six.

PAUL R. DEAN AND COMPANY, INC.

By Paul R Dean Pres

Paul R Dean

Paul R. Dean

John S. Nichols

John Nichols

Morton B. Smookler

Morton B. Smookler

EXHIBIT 17 – Shareholder's Agreement, dated 8-31-66.

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 31 day of August, 1966, before me personally came JOHN NICHOLS to me personally known who, being by me duly sworn did depose and say that he resides at 3901 Turk Hill Road, Victor, New York, that he is the Vice President of PAUL R. DEAN AND COMPANY, INC., the Corporation described in and which executed the within Instrument; that he knows the seal of said Corporation; that the seal so affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name by like order.

Donald G Houghton

DONALD G. HOUGHTON
NOTARY PUBLIC, State of N. Y., Monroe County
Commission Expires March 30, 1967

STATE OF NEW YORK) SS:
COUNTY OF MONROE)

On this 31 day of August, 1966, before me the subscriber personally appeared

PAUL R. DEAN
JOHN NICHOLS
MORTON B. SMOOKLER

to me personally known and known to me to be the same persons described in and who executed the within Instrument and they acknowledged to me that they executed the same.

Donald G Houghton

DONALD G. HOUGHTON
NOTARY PUBLIC, State of N. Y., Monroe County
Commission Expires March 30, 1967

EXHIBIT 16 – Employment Agreement of Paul R. Dean, dated 9-1-66.

EMPLOYMENT AGREEMENT

This Agreement, made as of the 1st day of September, Nineteen Hundred and Sixty-six, by and between PAUL R. DEAN AND COMPANY, INC., a domestic corporation, having an office and principal place of business in the Temple Building, City of Rochester, and State of New York, hereinafter called "Corporation", and PAUL R. DEAN, hereinafter called "Dean", WITNESSETH,

WHEREAS it is the purpose of the Corporation to employ Dean as General Manager for the conduct of the business under the terms and conditions hereinafter set forth,

NOW, THEREFORE, for good and valuable consideration, the receipt whereof by each of the Parties hereto being hereby acknowledged, the Parties hereto do covenant and agree as follows:

1. The Corporation hereby employs Dean as General Manager of the Corporation and Dean hereby accepts employment upon the terms and conditions hereinafter set forth.

2. Dean is engaged as General Manager and Sales and Business Representative of the Corporation to supervise and direct and have general control over the business of the Corporation, its personnel, public relations and servicing. Dean shall devote his entire time, attention and energies to the business of the Corporation and shall not during the term of this Agreement be engaged in any other business activity whether or not such business activity is pursued for gain, profit, or other pecuniary advantage; but this shall not be construed as preventing Dean from investing

P-10 Add

EXHIBIT 1

EXHIBIT 16 — Employment Agreement of Paul R. Dean, dated 9-1-66.

his assets in such form or manner as will not require any services on his part in the operation of the affairs of the companies in which such investments may be made.

3. Dean shall be furnished with private offices, stenographic help and such other personnel, facilities and services suitable to his position and adequate for the performance of his duties. He further shall be furnished with an automobile with which to carry out the said performance of his duties, there being no restriction on his using the automobile for other purposes.

4. For all services rendered by Dean under this Agreement the Corporation shall pay him a salary of TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS a year, payable in equal monthly installments at the end of each month. The foregoing shall not restrict or preclude his receiving such bonuses or other augmentation to his salary as the Board of Directors of the Corporation from time to time may direct.

5. At the end of each month during the term of his employment, the Corporation shall pay to Dean an amount of money for entertainment, travel, and other miscellaneous expenses incurred in the course and in pursuance of the business of the Corporation, such payment to be made against a signed, itemized list of such expenditures.

6. Dean's employment hereunder may not be terminated without just cause and then only after thirty (30) days' notice in writing from the Corporation to him.

EXHIBIT 16 – Employment Agreement of Paul R. Dean, dated 9-1-66.

7. The Corporation will obtain life insurance, insuring the life of Dean as a key employee in the sum of ONE HUNDRED AND FIFTY THOUSAND ($150,000.00) DOLLARS; the Corporation to be the beneficiary of any proceeds thereof and to pay the premiums for all said insurance.

8. The period of this Agreement shall be three (3) years commencing September 1, 1966, and thereafter shall be renewable with the consent of Dean and the Corporation from year to year.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

PAUL R. DEAN AND COMPANY, INC.

By John L. Nichols
John L. Nichols

Paul R Dean
Paul R. Dean

EXHIBIT 16 — Employment Agreement of Paul R. Dean, dated 9-1-66.

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 31 day of August, 1966, before me personally came JOHN NICHOLS to me personally known who, being by me duly sworn did depose and say that he resides at 3901 Turk Hill Road, Victor, New York, that he is the Vice President of PAUL R. DEAN AND COMPANY, INC., the Corporation described in and which executed the within Instrument; that he knows the seal of said Corporation; that the seal so affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name by like order.

Donald G. Houghton

DONALD G. HOUGHTON
NOTARY PUBLIC, State of N. Y., Monroe County
Commission Expires March 30, 1967

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 31 day of August, 1966, before me the subscriber personally appeared

~~JOHN~~ PAUL R. DEAN

to me personally known and known to me to be the same person described in and who executed the within Instrument and he acknowledged to me that he executed the same.

Donald G. Houghton

DONALD G. HOUGHTON
NOTARY PUBLIC, State of N. Y., Monroe County
Commission Expires March 30, 1967

EXHIBIT 26 – Excerpt from Aetna's Claims Manual, dated 7-30-71.

person in the same circumstances. This constitutes ordinary negligence. Gross negligence is far and above the omission of care of an ordinary reasonable person, almost criminal. Willful and wanton negligence is the reckless indifference to the consequences of ones act or omission. Negligence per se is that which is in violation of statutory law.

Non-Waiver Agreement - An agreement whereby a breach in the contract is not waived, and estoppel cannot be asserted.

Office Desk Claim - Claims handled within an office which usually are handled without benefit of a Special face sheet.

Omnibus Insured - A person entitled to coverage under a policy, although not specifically named as an insured.

Proof of Loss - A piece of documentary evidence and it is usually a means of procuring necessary evidence which cannot otherwise be procured at all, or cannot be procured with reasonable convenience or at reasonable expense; a means of putting the insured definitely on record in cases where that procedure seems to be necessary.

Pro Rata - (a) Distribution of the amount of insurance in one policy, among the several objects or places covered, in proportion to their value or to the amounts shown, (b) The distribution of liability among the several insurers having policies on the risk.

Referred Claim - A claim where the accident occurred and the policy was written in a territory other than your own and has been referred to your office for some special duty or service.

Reinsurance - A contract by which an insurer procures a third person (insurer) to insure him against loss or liability by reason of the original insurance; a contract that one insurer makes with another to protect the first insurer from a risk already assumed.

Reservation ofRights - The reserving or holding of rights and defenses afforded by the policy contract when a breach or violation by the other party to the contract occurs, thereby avoiding the accusation of waiver, estoppel or ratification of the breach.

Site Code - A code for certain insureds to identify, separate and/or change the cost of claims to categories other than a policy number. Examples are stores, plants, divisions, subsidiaries or projects.

Special Claim - A claim with an estimated full value under $2,500 in most lines of business which require neither reserves nor dictated reports.

Special Damages - In casualty insurance and negligence law, such actual or out-of-pocket expenses or damages as arise directly from the act or fault complained of.

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EXHIBIT 26

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

TECHNICAL	CLAIM MANUAL	Section: A-5 Date: July 30, 1971

OTHER MANUALS AVAILABLE

Claim Manuals

1. Claim Manual: Procedures: Procedural requirements for Casualty Claim handling.

2. Claim Policy Manual: A compilation of Casualty Policies currently in use.

3. Casualty Claim Training and Education Program Manual: Training of Casualty Claim Representative, Training Themes.

4. Group Claim Training and Education Program Manual: Training of Group Claim Representative.

5. Group Life and AD&D Claim Manual: Claim handling requirements.

6. A Guide for the Newly Appointed Supervisor: A practical approach to the problems of a new Casualty Supervisor.

7. Branch/Production Office - Loss Document Processing: Responsibilities of the Claim Department and the Processing and Coding Unit for the processing of Loss Documents.

8. Salary Administration Manual: Outlines salary program for clerical and technical personnel.

9. Organization Manual: Outlines organization of the Company. Available through General Manager or Manager.

10. SCAD Claim Service Manual: Outlines procedures for servicing SCAD accounts.

11. Controller Manuals: Personnel and Administration (Red) Accounts and Collections (Green).

12. Agent's Claim Manual: Outlines procedures and authority of agents in handling claims.

13. Job Evaluation Manual (unclassified): Position Description and Standards of Performance for clerical and technical personnel.

14. Letter Perfect: Outlines, procedures and format of Company correspondence.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

STATEMENT OF PRINCIPLES ON RESPECTIVE RIGHTS AND DUTIES OF LAWYERS AND LAYMEN IN THE BUSINESS OF ADJUSTING INSURANCE CLAIMS

The Claim Department of the Ætna Life and Casualty recognizes and is in complete agreement with the Statement of Principles covering the respective rights and duties of lawyers and laymen in the business of adjusting insurance claims as set forth by the American Bar Association. This Association has established a committee known as the Conference Committee on Adjusters which has responsibility for investigating complaints and recommend or take such action as is necessary to correct practices deemed contrary to public interest.

The Conference Committee on Adjusters has adopted the following Statement of Principles covering the rights of interested parties and the general public:

The insurance business operates under sanction of law for the protection of its policyholders and the public. The terms of insurance policies are nearly all upon standard forms adopted or approved by state authorities in the interest of the public.

The Committee believes that anyone who has, or thinks he has, a claim against a company is entitled at all times to courteous, fair and just treatment from the representatives of that company. A claimant is entitled to an investigation of his claim and a reasonable prompt statement of the company's position with reference to it.

The Committee recognizes that, while the companies have a definite obligation to pay all just claims and to avoid unnecessary litigation, they have an equally definite obligation to protect the insurance buying public from increased costs due to fraudulent or non-meritorious claims.

1. Claims under insurance policies, for the purpose of this statement, are divided into two classes:

   First - A claim in contract by a policyholder or beneficiary directly against the insurance company which issued the contract.

   Second - A claim of a third person in tort against the holder of a policy of liability insurance.

2. In the first class, the claimant and the insurance company each has the right to discuss the merit of the claim with the other, and to settle it.

3. In the second class, under a policy by which the company insures the liability of the policyholder, it is recognized that the company has a direct financial interest in the claim presented against the policyholder, and in a suit in which the name of the company may not appear

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

TECHNICAL	CLAIM MANUAL	Section: B-1 Date: July 30, 1971

COVERAGE

Carefully examine every notice of accident to determine whether it is covered by the policy under which it is reported.

Questions of coverage must be raised when the case is new. Any investigation may be prejudicial to our rights if coverage questions are not previously raised.

Do not take any technical or unreasonable position on questions of coverage. Give careful consideration to coverage questions for either a denial or for the possibility of our underwriters securing additional premiums.

Advise the responsible Home Office Division of questionable coverage. Consider the underwriting intent in issuing the policy and also the legal principles involved in interpreting the policy construction.

When writing to the Home Office, give the policy number, policy form and the accident date. This will expedite the handling of your correspondence.

You are never justified in assuming that policy coverage exists. Read the policy carefully.

Refer to M & P Claim Manual, Section 4200 for responsibilities in determining and deciding coverage questions.

EXHIBIT 2G -- Excerpt from Aetna's Claims Manual, dated 7-30-71.

TECHNICAL	CLAIM MANUAL	Section: B-6
		Date: July 30, 1971

DELAYED NOTICES

Delayed notice to us of covered accidents and losses adversely affects our underwriting and reserve programs. Delayed notice occurs if and only if the insured or his representatives has knowledge of an accident or loss long prior to his reporting same to us.

To help us treat delayed notice countrywide in a uniform manner, carefully observe the following rules:

1. Accept for investigation any notices whose delay may constitute violation of the policy's notice provision with a full reservation of our rights.

2. Refer to the Home Office a report whose delay in any way prejudices our interests. Give a full account of reasons for delay and ask for authority to handle.

3. When there is less than six months' delay on notice, accept the case unless prejudice is found. Incorporate an explanation of the delayed notice in your investigation report only if unusual circumstances surround the case.

4. If there is six months to a year delay, use your discretion relative to acceptance if there is no prejudice. Devote a separate paragraph in your investigation report, captioned "Delayed Notice", to an explanation of the reasons for the delay.

5. If there is more than a year delay (except Special cases), promptly investigate the reasons. Refer the case to the Home Office for authority to accept. If the insured or his representative had no prior knowledge of the occurrence, there is no delayed notice.

6. Accept Specials only if there is no prejudice to the Company's interest according to your best judgment.

7. If the insured claims no knowledge of the accident, do not send a reservation unless and until you have reason to believe him mistaken.

8. Determine promptly whether or not a reservation may be lifted and notify the insured at once.

Even if compelled by state law to accept claims after delay of notice, follow the program outlined in this bulletin. You have authority to accept any case in states requiring acceptance, even those involving a delayed notice of one year or longer. Incorporate in one of your reports to the Home Office a brief explanation of the reasons for such a delay.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

The impact on an insured of the receipt of a letter of reservation of rights is often severe, sometimes shocking. Make the letter clear and understanbable. Do not obscure the message. Anticipate and alleviate the shock by considering how the letter should be delivered. Frequently, an explanation by telephone that a letter is being sent will be sufficient; at other times a hand delivery or the help of the agent is preferable.

Telegraph the underwriting office when you send a reservation letter on a foreign policy claim. The underwriting office will prepare the insured for the receipt of the reservation letter if necessary.

You may base your own reservation letter on the following model:

Name of Insured
Date of Accident (Loss)
Policy Number

We first received notice of this accident on _____ (date). Condition Number _____ of the above-mentioned policy requires that written notice be given us as soon as practicable.

Because of the lapse of time between the date of the accident (loss) and the date we were notified of it, we find it necessary to reserve our rights to disclaim coverage on the ground that notice was not given to us as soon as practicable.

We will conduct any investigation or activity in connection with the case under a full reservation of the Company's rights. Such investigation or activity does not prejudice our right to disclaim coverage at a later date.

Please understand that we are not denying the coverage or protection afforded under your policy. We are sending this letter so that we can proceed to handle the investigation of this case pending our decision on whether notification was given as soon as practicable and, if not, whether the circumstances require us to deny coverage.

We will inform you of our decision on this point when our investigation of this delay is complete. In the meantime, your rights and interests are being protected just as though a timely notice had been given.

The provisions in this section do not apply where there are specific time requirements in the policy for reporting accidents or losses. Examples: 1. "hit and run" accidents under Uninsured Motorists coverages; 2. Fire losses under all Fire policies and Multiple Peril policies. Refer to the Home Office claims and losses not reported in accordance with the terms of these policies.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

TECHNICAL | CLAIM MANUAL | Section: B-7 | Date: July 30, 1971

DECLINATION OF COVERAGE

The words "declination of coverage" include any disclaimer of liability under a policy as well as any rescission of a policy contract.

Make all declination of coverage on third party cases promptly by letter. Your local Claim Department must decide whether a letter is to be written on declination of coverage involving property claims (Fire, Marine and Material Damage). This rule applies to partial or qualified declinations of coverage as well as to declinations involving coverage in its entirety.

Direct a letter to all parties for whom we have been asked to afford coverage. The Manager, Superintendent in charge of the claim office or, in his absence, his assistant must sign the letter.

DISCLAIMER OF LIABILITY

The following is the suggested form to use in preparing letters of declination:

Date

Re: 6 PP 291480
Richard Roe, Claimant
Policy 6 I 89480

Mr. John Doe
99 Olsen Street
Boston, Mass.

Dear Sir:

We acknowledge the report of the above captioned incident which occurred on March 5, 1969. Our investigation indicates that in May of 1968 you completed work at the home of Mr. Richard Roe in accordance with your contract.

We direct your attention to the terms of the policy of insurance which you carry with us, which under the caption "Exclusions" provides:

(Quote particular clause applicable to the loss.)

In view of the above (clause or exclusion) we must necessarily take the position that the above captioned loss does not come within the terms of your policy.

We suggest that this claim be referred to your own counsel so that your interests may be properly protected.

Yours very truly,

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

This suggested letter is an outline only; it is not intended to be quoted verbatim in every situation. Specify in this letter each and every known ground for declination. Unless this is done, we may later be estopped from pleading a valid defense. If, after the original letter of declination has been sent, additional grounds for declination come to your attention, prepare another letter to cover this.

Send a copy of the letter of disclaimer to the General Manager and to the agent or producer at least 48 hours in advance of mailing the original letter. Insert the following postscript on the copy which is sent to the General Manager:

> Unless you issue instructions to the contrary, the original of this disclaimer (or reservation) will be given (or sent) to the insured after explaining the circumstances to him. Are there any underwriting or agency reasons for special handling?

Insert the following postscript on the copy which is sent to the agent or producer:

> The original of this letter will be mailed on the _____ day _____. If you care to discuss this claim before we mail the original letter to the policyholder, please communicate with us upon receipt of this copy.

If the declination involves foreign coverage, send a copy of the letter to the General Manager supervising the underwriting office.

Send a copy of each disclaimer letter prepared on Regular claims to the Home Office or the New York Office.

Show the name of the individual who sealed and posted the declination letter on the file copy of the letter.

RESCISSION OF CONTRACT

When the declination of coverage involves a rescission of policy contract, apply the following procedure:

Prepare a letter to the Home Office Claim Department outlining in complete detail the basis upon which you believe rescission of the policy should be predicated. The Manager or Superintendent in charge of the Claim Department or, in his absence, his assistant must sign this memorandum. Send a copy of it to the General Manager.

The Home Office Claim Department will discuss the proposed rescission with the appropriate Home Office Underwriting Department.

If it is decided that the policy should be rescinded, the Home Office Claim Department notifies your office by letter with a copy to the interested General Manager.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

TECHNICAL | CLAIM MANUAL | Section: E-3 | Date: July 30, 1972

FIDELITY BOND CLAIMS

REPORT FORM

Use the following report form for all claims on fidelity bonds. As in claims of any type, report the source of all information, the when and where of all interviews and the present location and custody of all documents mentioned. The paragraph "Prior Dishonesty" and other references to the principal should be omitted when the claim is based on something other than employee dishonesty.

ESTIMATE: Confirm, raise or lower by naming amount.

COVERAGE: Identify the type and amount of bond and Insuring Agreement involved. State the deductible, if any; other applicable coverage, if any, and applicable Riders, Endorsements, Exclusions, etc. State whether Principal is an employee as defined in the bond.

NOTICE: State who, how, when and where reported to Ætna.

DISCOVERY: State how, when, where and who discovered that the insured sustained a loss.

PRIOR DISHONESTY: State whether the Insured has any knowledge of prior dishonesty of the Principal.

LOSS: Be sure to cover the following:

1. Nature of loss, Insured's version, description of Insured's operation, detailed description of how loss occurred

2. Principal's version, details regarding Principal, his background, relationship with Insured.

3. Version of any other parties involved in, or having knowledge of the loss.

AMOUNT OF LOSS: Indicate how the Insured has or will establish the loss. Give dates. Indicate how you have or intend to verify the loss. Indicate any possible off-sets such as credits, salaries, pensions, etc.

SALVAGE: Indicate the Principal's resources and what he proposed to do about restitution. Determine and report possible liability of third parties, such as banks, etc.

REMARKS AND STATUS: Indicate how the matter was left. Use this paragraph for any additional comments.

EVALUATION: Give your present evaluation of the claim based upon known facts, quality of proof, timeliness of notice, prior discovery, etc. State whether the acts are dishonest.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

THINGS TO DO: Enumerate additional investigation to be accomplished or additional items to be done.

DIARY: Indicate date next report will be prepared.

EMPLOYEE DISHONESTY CLAIMS

These claims involve legal pitfalls and danger areas as follows:

Lawsuits for Damages. Where a specifically named individual is charged with dishonesty there must be proof of the accusation, strong enough to overcome the legal presumption of honesty. Any evidence, circumstantial or otherwise, falls short of this mark, no matter how damning it may appear, if there is a conceivable explanation of the known facts which is consistent with innocence. We like to give our insured the benefit of any doubt. In this kind of claim the law requires us to give this benefit to the accused person. Actions for libel, slander, false arrest and the like are expensive to defend and more expensive to lose. This consideration affects the handling of these claims in two important areas:

1. Do not waive a sworn proof of loss in any claim based on employee dishonesty. The proof of loss must be completed by the insured without assistance or suggestions from us. It must be clear that the insured, acting on its own responsibility, is making the charges of dishonesty.

2. The investigation is not complete until the principal has been interviewed. If he admits guilt, take a signed statement. Otherwise, give him full opportunity to provide an explanation and facts which support his claim of innocence.

Criminal Prosecution. In general, employee dishonesty causing loss under a bond is a crime. Should there be a report to the authorities? Should there be a prosecution?

This is a decision to be made by the insured and you should not seek to influence it in any way. Note that the policy requirement of a report to the police, found in certain policies, does not apply to the employee dishonesty and forgery coverages.

As a matter of principle, Ætna will cooperate with the authorities in any case, but remember that as surety we handle a large volume of these claims, all on second-hand hearsay information. We cannot be expected to report crimes and/or institute prosecution on a wholesale basis. Therefore, take no such action except upon the specific approval of the Home Office.

Compounding - Blackmail. An agreement not to prosecute if the accused person will perform a certain act (such as signing a promissory note), is the crime of compounding. A threat to report a matter to the authorities, unless the accused person signs the note, etc., is both an offer to compound and blackmail which also, in many jurisdictions, is a crime. Never be party to any such "deal". If the insured seems to be thinking along those lines, tell him to consult his own attorney.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

The polygraph. The polygraph is also known as the "Lie Detector." In Milino v. Board of Public Safety, the Connecticut Supreme Court stated: "The unreliability of the polygraph test has resulted in its universal rejection as competent legal evidence of truthfulness." 154 Conn. 368, 379 (1966). Until and unless results of these tests are admissible in evidence, they are of no value to us. Therefore: (1) take no part in arranging for or paying for lie detector tests; (2) never encourage an insured to obtain lie detector tests; (3) where a lie detector test has been made, obtain a copy of the report as part of your investigation to consider for what it may be worth.

Letters of Acknowledgment

All notices of claims based on employee dishonesty should be promptly acknowledged in writing. The following, as a general format only, is suggested:

1. The first paragraph will refer to the date the notice was received and identify it as a letter, telephone call, or whatever.

2. If, from the content of the notice or otherwise it appears that there has been a breach of any of the conditions of the policy, it should be commented upon. Delay in notice is the most frequent breach. The suggested form of paragraph will therefore refer to a breach of this kind:

   "Your bond requires that notice be given as soon as practicable after discovery of loss. It appears that there may have been a violation of this requirement. While we will make no final determination until all available and relevant information has been considered, please be advised that our attention to this matter is not to be construed as a waiver of any of the terms of the bond."

3. If an exclusion may apply to the claim, the letter should include a paragraph of this type:

   "Your notice refers to an inventory shortage. In all fairness, we must call your attention to a provision of the bond which may apply to your claim, Section 2(b) of Exclusions." (If the claim is made under a Blanket Position or Commercial Blanket, rather than a 3-D or Blanket Cri[illegible]olicy, the inventory exclusion is Section 2).

4. In any case the letter should contain a paragraph such as the following:

   "We shall expect to receive from you, in due time and as required by the bond, an affirmative proof of loss with full particulars, duly sworn to. Our proof of loss form is enclosed. Note the comments and instructions found thereon."

If the original notice of claim is completely lacking in essential information, you may also enclose a "Notice of Discovery of Loss" form, S-1877 with the request that it be promptly completed and returned.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

Investigation of Employee Dishonesty Claims

Insured's Version. Where the insured has unequivocally accused an employee of dishonesty and where there is no known ground for reserving rights, the investigation should commence immediately. It should always start at the insured's place of business. It is necessary to have a complete understanding of the case against the principal before interviewing him. The facts disclosed or confirmed by the insured's business record are of key importance so always examine these records.

Principal's Version. Nothing short of sheer impossibility will justify a decision to pay a claim of this kind without an interview of the principal. Plan for the interview so that it can be held under conditions which will promote frank discussion. Your office may be the best place. The principal's home, in the presence of a spouse, undoubtedly is the worst. If the principal admits guilt, a signed statement should be taken. Otherwise he sould be given a full opportunity to provide an explanation and facts which support his claim of innocence. This first interview is also your best opportunity to obtain information about his financial resources and leads for locating him in the future.

Establishing the Amount of Loss

Audits. Where the insured submits an audit report in support of its claim, review and analyze this report and some or all of the back-up documentation, depending upon its extent. If the case is a Regular, the Home Office needs a copy of the audit. Copies of the documentation should not be sent to the Home Office except upon specific request. The principal should be asked to assist in the review and analysis of the audit report. Occasionally, in large and complicated losses, it may be necessary to hire an auditor to review the insured's claim. Do not hire an auditor without advance Home Office approval.

Excluded Computations. Where the insured's claim is based upon inventory or profit and loss computations, always make it clear to the insured that Exclusion 2(b) of the Blanket Crime and 3-D policies is not being waived. Any written communication from the insured which states or infers that the claim is so based must be answered in a writing which will refer to the exclusion.

Lapping. This may best be explained by a concrete example: Smith pays his bills to the insured and the principal embezzles this payment. Jones then pays his bill to the insured. In order to keep the books current the principal applies the Jones payment to the Smith account. This may continue with a Brown payment being applied to the Jones account. The only money which has been embezzled is Smith's payment. The other payments have been misapplied. The insured got the proceeds of these misapplied payments. The problem is to determine whether a given misapplication is concealing an embezzlement or only a prior misapplication.

Confessions. Frequently the insured has obtained a confession from the principal which contains an estimate of the total of his thefts.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

As evidence of the amount of the loss, such a confession can only be regarded with skepticism. Its value is dependent upon the answer to two questions: (1) to what extent is the estimate based on real knowledge as opposed to guesswork? (2) What guarantee is there that the principal is trying to tell the truth?

If the principal has kept records of his embezzlements and these records support the amount stated in the confession, these questions will be satisfactorily answered. In the absence of some such corroborative evidence, neither the insured nor the surety can accept figures from such a suspect source.

In these situations, it may be of value to review with the principal his income and expenditures during the period of embezzlements. The difference between legitimate income and expenditures may be an indication of the amount of the thefts.

Credits Due Principal. The surety is entitled to a credit against the claimed loss in the amount of any funds due the employee which are held by the employer at the time it discovers its loss. This includes earned salary, vacation pay, severance pay, pension funds and the like. This credit should be taken notwithstanding any payment which the employer, having knowledge of its loss, may have made to the employee.

Specific Grounds for Denial

Your investigation must also consider defenses which are available to the surety even in those cases where there has been a loss which otherwise is within the coverage. This is a difficult part of the investigation. The insured is anxious to tell about the facts which show that he has had a loss and that his employee is dishonest. The insured is understandably reluctant to knowingly provide information which will defeat his claim. This is no place for a blunt and direct approach. This is a sensitive area. The insured with a meritorious claim may get the idea we are interested only in trying to avoid payment. The insured with something to hide is alerted. In fact, we are not trying to manufacture defenses. However, unless as a matter of routine we check for possible defenses in every case we will never learn of them in any case. Examples of these specific grounds are the following:

Prior Notice of Dishonesty. All fidelity bonds contain provisions automatically removing from coverage any employee whom the employer knows to be dishonest. The philosophy of this exclusion is that the Ætna will take its chances on employees who are unknown quantities -- but that the employer hires or retains the known crook at his own peril. To expect Ætna to cover under these circumstances is like buying fire insurance after the house is known to be on fire.

Finding out about this prior notice of dishonesty and getting proof of it is a challenge to the investigator. When the insured is first interviewed, he generally wants to tell you all about the principal and he should be given a chance. Be a patient listener. If you let the insured talk, he may voluntarily tell you about the prior dishonesty and his knowledge of it. If the subject has not been covered after lengthy discussion, carefully framed questions should be asked.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

In any event, your investigation of the point should not cease. You should review the principal's personnel file and his payroll record. The personnel file may contain a wide variety of information. The application for employment should be carefully examined and previous employers noted. In a substantial case previous employers should be contacted. Payroll records may show significant deductions from wages for which you should obtain an explanation.

Delay in Giving Notice, In Filing Proof of Loss and In Filing Suit On the Bond. Most fidelity bond forms provide that compliance with each of the provisions relating to notice, proof of loss and suit is a condition precedent to any claim on the bond. If an insured has failed to comply with any one of these provisions his claim is barred, regardless of whether the surety has been prejudiced by the failure. The problem of the investigator here is not one of developing information. It is rather the avoiding of any act or omission which a court, understandably reluctant to work a forfeiture, might construe as a waiver of the conditions. The guiding principle is that, from and after the time the surety learns there may have been a violation of one or more of these conditions, it can continue with its investigation only upon a clearly stated reservation of rights. In any case involving these delays advise the Home Office just as soon as you learn of the problem.

Prejudice to our Salvage Rights. Ordinarily this will result from a settlement by which the principal has made a payment to the obligee in return for a release. Occasionally, the settlement will be between the insured and someone else. For example: The insured may have released a junk dealer who bought materials which the principal had stolen from the insured.

Absence of Employer-Employee Relationship. The so-called "principal" may be partner, independent contractor, consignee of merchandise, corporate officer who is in fact the alter ego of the corporation, corporate director acting outside of the limited area where coverage is granted, or bear some other relationship which is not within the definition of "employee" contained in the bond. Obtain a copy of any contract between the insured and the "principal" and of all other relevant documents.

Extensions of Credit. It is not dishonest to fail to repay a debt. A salary advance which has not been repaid is not an embezzlement. An N.S.F. check is not dishonest if the principal honestly thought there were funds in the bank to cover the check. A claim may be presented which is in part covered but which includes items of simple debt. Eliminate these items from any claim settlement.

Disobedience Rather Than Dishonesty. It is not necessarily dishonest to disobey instructions. The employee making sales for his employer may sell for less than he was told he could. A purchasing agent may buy at a price above that authorized. If there has been a secret profit to the employee this may be dishonest. On the other hand, the employee may have acted in good faith and exercised what he thought was good judgment in the interest of his employer.

Loss Caused by Unidentifiable Employees.

All blanket bonds which cover loss resulting from employee dishonesty provide that such loss is covered notwithstanding the fact that the insured is unable to designate the specific employee.

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

Where the claim is for loss of cash or securities and unless there are clear indications of employee theft, the loss should be paid under the coverage for mysterious disappearance where there is such coverage. For example: Insuring Agreement II or III of the Blanket Crime policy. Handling of these claims is discussed under the heading THEFT CLAIMS on page E-3-10.

Where property is lost which is neither money or securities, absent special coverage by rider, the only Insuring Agreement which will apply is that covering employee dishonesty. If the only evidence in support of the loss is the fact of an inventory shortage and nothing else, the exclusion will apply and the claim should be denied.

Where the claim is based upon the disappearance of a specific article, it will be contended that the article did not walk off by itself and that only employees had access to the area where the article was kept. A careful investigation will consider all possibilities - what are the hours when the building is open and when is it shut, when do outside salesmen call, is there an independent janitorial, trash pick-up, or guard service. A diagram of the premises is part of every investigation, and a check of all doors and windows.

Proofs of Loss

Proof of Loss Form F-1134 completed by the insured is mandatory in all claims based on employee dishonesty. For other claims use Form F-1135.

Extensions of Time for Filing Proof of Loss. Timely requests for reasonable extensions of time for filing proofs of loss are usually granted where the insured has actual need for the time. Where the claim is a Special or a Regular within Field Office authority, you may pass on and grant such extensions without consultation with the Home Office. Waiver of a possible delayed notice should be avoided by wording your letter as follows:

> "You have requested an extension of time within which to file proof of loss in the captioned matter.
>
> We hereby agree that proof of loss filed on or before _____ shall have the same force and effect as if filed on _____, the date of your request."

Send the original of the request and a copy of your extension letter to the Home Office on all Regular claims.

Upon Receipt of Proof of Loss. If a proof of loss is deficient in any respect our failure to point out the defect may be construed as a waiver. Unfortunately, there are no established legal standards in this area. In any event, we do not wish to be over-technical. Defects of form will be waived. Defects of substance should not be waived. Examples of the latter would be a failure to specify the loss as caused by a hazard within the coverage of the bond, failure to specify an occurrence date and/or a discovery date which would fall within the provisions of the bond. Upon receipt of a proof of loss, take one of the following actions as may be appropriate:

EXHIBIT 26 — Excerpt from Aetna's Claims Manual, dated 7-30-71.

1. In a proper case where the investigation is complete, make prompt settlement by exchanging our draft for an executed release and assignment.

2. In any case, where the facts as determined by our investigation and/or as positively stated in the proof of loss, affirmatively show lack of coverage, promptly deny the claim by letter to be preceded or supplemented by a personal conference with the insured and/or agent when such conference seems desirable. The letter should point out the specific ground or grounds of the denial but should also advise that the mentioned grounds are "among others" and that all rights and defenses are reserved. It is not necessary to return the proof of loss papers to the insured.

3. Where it is possible that the claim may qualify for payment, but the proof of loss contains defects which could be remedied, such as the omission of a key fact, promptly advise the insured by a letter which points out the defects. Enclose proof of loss forms and grant a reasonable extension of time for filing the revised proof. Make no suggestion as to what statements the revised proof of loss should contain. The letter should close with a reservation of rights.

4. We have the right to investigate after receipt of the proof of loss. In any case where the investigation is not complete, acknowledge receipt of the proof of loss by a letter which advises that our review of the papers and our investigation will promptly be commenced. Where there is still some question of timely notice or other breach of condition, the letter should reserve rights somewhat as follows: "Our attention remains without prejudice to your rights and ours."

Settlement

Upon settlement, unless the Home Office has asked that a special release be used, prepare a Release & Assignment Form S-1806 for execution by the insured in exchange for the settlement draft. Under no circumstances is this form to be submitted to the insured until you are ready to commit the Ætna to a settlement in the amount which must be stated on the Release and until such settlement has been approved by a person having authority to do so. In completing the Form S-1806, after the language in the first paragraph "arising out of", phrases in the general nature of the following should be used:

(a) In a claim based on the dishonesty of a known principal who is named in the proof of loss: "all actions and omissions of (using the name of the principal.)"

(b) In a claim based upon the dishonesty of an unidentified employee: "shortages in the petty cash account (or whatever) as described in our proof of loss dated _____".

(c) In claims based on a hold-up, burglary, disappearance of cash: "The hold-up (or whatever) which occurred on March 10, 1970, at 1001 Main Street, Centerville, U.S.A."

EXHIBIT 20 – Excerpt from Aetna's Underwriting Manual, dated August, 1971.

Maitchner

FORM 14

ELIGIBLE INSUREDS

With the promulgation of Form 15, Form 14 henceforth will be limited to Insureds whose principal activity is dealing in securities, i.e. stockbrokers, investment bankers, investment trusts dealing primarily in securities (not mortgages or real estate), mutual funds (but not non-employee sales representatives or sales organizations), foundations and endowment funds, and those commodity brokers who belong to recognized exchanges which require that their members carry a stockbroker's blanket bond. (For other commodity brokers, issue commercial forms, Class Codes 832 or 834).

UNDERWRITING - GENERAL

Recent experience on stockbrokers' blanket bonds has been disastrous. Before writing new risks, or renewing existing coverage, we require the most detailed description of the business operations of the Insured. We will require full details as to personnel and equipment, a review of measures taken to safeguard property on the premises and in transit, details as to audit and a review of the applicant's experience.

STOCKBROKER'S LOSS CONTROL QUESTIONNAIRE - FORM F-1146

This form has been devised to develop information necessary for the underwriting of Form 14 on stockbrokers. The form should be completed:

1. On new risks as part of the original submission.
2. On existing risks, so as to be in your hands two months prior to the renewal date. Because of the limited number of stockbrokers we write, completed forms should be sent to the Home Office for analysis.

ENDORSEMENT AND CONTROL OF SECURITIES

Stockbrokers have been beset with a series of major losses of securities. Indications are that organized criminal elements have infiltrated and are continuing to infiltrate brokers' offices with the intention of stealing securities. Poor controls contribute to the losses.

In a recent case all of a broker's corporate registered bonds starting with letters P through Z disappeared. The broker's records did not permit ready identification of the specific certificates which were supposed to be on hand. In addition, all the certificates had been endorsed in blank, making them immediately negotiable. (Purchasers of "street form" certificates are supposed to verify the right of the seller to the securities, but fake confirmation slips can be obtained without difficulty.)

Before considering coverage on any stockbroker, we will require answers to the following questions:

Endorsement of Securities

Most securities must be endorsed to be negotiable. If securities are not

P-21 Jat EV

EXHIBIT 20

EXHIBIT 20 — Excerpt from Aetna's Underwriting Manual, dated August, 1971.

endorsed, the thief must forge the endorsement. The broker guaranteeing such forged endorsement is then liable, and the owner suffers no loss. Some brokers, however, habitually endorse all certificates immediately upon receipt. Loss of a security so endorsed means a loss to the owner and to us.

Mutual fund shares and municipal bonds are usually not so endorsed. As to brokers who deal in other securities, please secure the following letter:

> "As an inducement for Aetna Casualty and Surety Company to provide a Brokers Blanket Bond on our behalf, we agree that we will, as standard operating procedure, immediately upon receipt endorse all securities which may be so endorsed so as to render them non-negotiable except with subsequent endorsement, and that such subsequent endorsement will be made only in the 30 minutes immediately prior to delivery.
>
> We have advised all personnel of these requirements - see the attached bulletin. We will issue a reminder each six months and furnish you a copy of such reminder."

The letter should be first secured as part of the original solicitation on new accounts and at the next renewal of existing accounts.

On a very few risks we have already attached a warranty which provides there is no coverage for the loss of any security in endorsed form. If the Insured gives us the letter above, you may withdraw the warranty.

Custody of Securities

Does the broker have custody of securities either owned by him or by his customers? If so, what is the total value and where are they kept? If in an out-of-office vault, where, and who has access? Is there joint control? If in an office safe or vault, describe it and the alarms if any protecting it. Who has access to the safe or vault? How long have they been employed?

Records of Securities in Custody

Is a record maintained which permits instant determination of the precise certificates which they are supposed to have, what certificates they do have, and the whereabouts of any others not in the safe or vault? Does the record contain the initials of the person responsible for any certificate not in the safe? How often is an inventory made by certificate number?

We recommend a certificate registry card for each security issue, with all certificates listed as received, with details as to the certificate number, number of shares, and source from which obtained. Whenever a certificate is removed from the vault or safe, the card should be initialed by the person making the withdrawal. When the certificate is removed for delivery, the delivery clerk should initial and indicate to whom delivery is made. Certificates should be inventoried frequently as possible. Certificates out of the safe or vault should be traced and their whereabouts verified.

If Form F-1146 does not give a complete description of the Insured's procedures as to endorsement and control of securities, give us sufficient narrative explanation so that we can understand precisely the measures taken by the Insured to protect against loss in this area.

EXHIBIT 20 – Excerpt from Aetna's Underwriting Manual, dated August, 1971.

On existing risks, review the endorsement and control of securities at least annually and make certain that the Insured is taking proper precautions to protect himself and us.

NEWLY ESTABLISHED STOCKBROKERS

In the case of newly-established firms, the equipment and the safeguards which have been set up should be reviewed, but in addition thereto a very thorough report should be made on the past experience and the qualifications of the persons who form the partnership or the corporation.

You should make a complete check as to the background in the investment business of the owners, officers and principal employees. A Dun and Bradstreet or other independent report may be useful, but more important, the Bond Manager or an experienced Bond Representative should personally interview prior employers to determine the experience, character and qualifications of the persons involved. We should also consider the type of firm by which the principals were previously employed. If the previous employer has a questionable reputation, it is reasonable to assume that the new firm will follow the same pattern.

In addition we should check the banks with which the firm will do business to determine the extent to which the banks will extend credit, if at all.

SPECIAL CATEGORIES OF BROKERS

Floor Brokers (Sometimes called "Rule 440" Brokers)
Introducing Brokers
Exchange Members Without Employees
Non-clearing Brokers

See Manual page FI-70 for special rate considerations for brokers in the categories cited. Check each such Insured at least semi-annually to see that he continues to be eligible for the rate consideration given.

MUTUAL FUNDS

Mutual funds are eligible Insureds for Form 14. In most cases a mutual fund has a contract with a management company which is responsible for administration of the affairs of the fund, for selection of investments and for recordkeeping, etc. Where the management company is responsible only for a specific fund, it is an eligible Joint Insured with said fund.

MUTUAL FUND SALES ORGANIZATIONS

Mutual fund shares may be distributed by stockbrokers or through the fund's own sales organization. A Form 14 on a mutual fund cannot include non-employee salesmen or separate sales organizations. The mutual fund's sales organization should be construed as a "securities sales organization" rated on ME page 71, class code 835, to be covered on mercantile forms, and underwritten precisely the same as any other home sales operation, like books, cookware or home improvements.

MUTUAL FUNDS SPONSORED BY LIFE INSURERS

Where a life insurance company sponsors a mutual fund, the mutual fund should have its own separate Form 14. This is necessary to satisfy the SEC requirement that the fund have first dollar coverage, and first rights of recovery. In such cases the management company is usually completely controlled by the life insurance company

BEST COPY AVAILABLE

EXHIBIT 20 — Excerpt from Aetna's Underwriting Manual, dated August, 1971.

and is eligible as a Joint Insured in the insurance company's Form 25 or 25-L. If a life insurance company-sponsored mutual fund is sold primarily through the life insurer's sales force, the insurer's Form 25-L may be endorsed to cover losses due to acts of covered life insurance salesmen selling the shares of a named mutual fund.

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by a) C & L b) Client and Examined by
Reviewed by C & L Staff

Paul R Dean & Co, Inc.
Officer's Personal Account - PRD 1 of 7
6/1/71 - 4/4/73

			DEBITS	CREDITS	JOURNAL DESCRIPTION AND OTHER COMMENTS
1971					
6/1	Balance Forward		45041.55		
6/29		CDCR-V		10000.00	
7/9	P.R. Dean	M# 117	10000.00		Pay back
8/31		CDCR-6		40000.00	
		✓		20000.00	
		J-10		6000.00	
		J-5	12000.00		
		J-8	90147.00		
		J-9	3933.86		
9/24	P R Dean	C# 1509 C# 2058	5000.00		PD Loan — Two check #-s per journal put 2058 & 1509 was void
9/24	Cash	C#2059	300.00		Paul - loan
9/24	Red Carpet	C#2060	2136.20		PD Loan
9/30	Paul R Dean	M# 209	8500.00	76000.00	Loan
10/12	Colonial Banking	C# 2120	47.00		Paul - Loan
			16735.61		
10/18	David Allen Sessions	C#2131	27.85		Total check amount - 1224.83
11/11	American Express	C#2237	908.14		Paul - Hotel/Airline (loan)
11/24	Red Carpet	C#2766	399.00		Paul - f&a
11/30		MMCR-N		7936.05	
		-N		16000.00	
		J-14	25000.00		
12/6	L R Bankamerican	C#2293	606.81		Paul loan
12/7	Paul R. Dean	C#2299	30000.00		Loan — Total check amount 541.25
12/20	Red Carpet	C#2371	270.63		Paul - loan
12/23	Paul R. Dean	C#2391	5000.00		Paul - loan
12/29	Paul R. Dean	C#2398	2000.00		Paul - loan
1972					
1/5	P. R. Dean	C#2441	3000.00		MISSING ✓ Plf Ex 8 pt 2
1/14	Colonial B&T Co	C#2457	89.67		
1/17	P.R. Dean	C#2464	7000.00		
1/31		CDCR-13		17000.00	
1/21	Mort Smoodler	C#2489	15000.00		
1/7	Paul R. Dean	M# 256	125000.00		Loan
2/15	Colonial Banking & Loan	M# 273	561.67		Paul - loan Photocopy ✓
2/29		CDCR-22		37000.00	
	TWO TOTALS		387327.56	151936.05	EXHIBIT 8

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by: a) C & L b) Client and Examined by
Reviewed by C & L SA/SLP

Paul R Dean & Co, Inc.
Officer's Personal Account - PRD 2 of 7
6/1/71 - 4/4/73

		SUBTOTALS	FORWARDED	DEBITS	CREDITS	JOURNAL AND OTHER	DESCRIPTION COMMENTS
71				38238936	15193605		
1/29			MMBCD1	50000			From general ledger posting journal sheet not available
1/4	P R Dean		C#4551	1000000		Paul - Loan	
1/17	P R Dean		C#2615	1000000		Paul - Loan	
1/24	Paul Dean		C#2713 - C#2715	40000	MISSING		Check # not indicated in journal - should be within this series.
1/27	Red Carpet		C#2720	27000			
1/30			J-16	6823623			
2/2	Marine Midland Master Chg.		C#2758	2868		Paul Loan	
2/10	P R Dean		C#2760	500000		Paul Loan	
2/11	Columbia Sav & Loan		C#2763	58973		Paul Loan	
2/13	P R Dean		C#2771	1600000		Paul Loan	
2/13	P R Dean		C#2774	1000000		Paul Loan	
4/26	P R Dean		C#2837	500000		P. Loan	
4/28	Paul Dean		C#2848	500000		Loan	
		SUBTOTALS		51367420	15193605		

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by a) C & L b) Client and Examined by
Reviewed by C & L SR SUP

Paul R. Dean & Co., Inc.
Officer's Personal Account - PRD 3 of 7
6/1/71 - 4/4/73

				DEBITS	CREDITS		JOURNAL AND OTHER COMMENTS
1971	SUBTOTALS FORWARDED			513 672 20	151 936 05		
4/3	Rech. G & E	MH	300	3403		151,451	Paul - loan
4/28	Bernice Jinglar	MH	310	15750			Paul - loan
4/28		MH	CR-27		25000 00		
5/14	Columbia B S & L	MH	364	56167			Paul - loan
5/9	Mitchell Beich	CH	2863	560000			Loan - Paul
5/9	Kimmell	CH	2864	812000			Loan - Paul
5/15	L-R Bean Steam	CH	2884	117 077 00			S M Graphic
5/18	P R Dean	CH	2898	642300		427,249.60	Profit on Stock
5/27	L.R.-B.S.-Paul Bean	CH	2895	518 267 90			Syntex } 6000 shares $51,955.67
5/27	P Dean	CH	2910	33 694 77		X	Comm. on stock }
5/18	L. Kimmell	CH	2928	470000			Paul - Loan
5/20	John Lynch	CH	2930	30000			Paul - Loan
5/31		CB	CR-26	35 714 57	675 455 67		
	SUBTOTALS			12 438 136 4	852 391 72		
BALANCE PER GENERAL LEDGER, 5/31/71				391 421 92			
5/31	Adjustments				100 493 36		
	SUBTOTALS			391 421 92	100 493 36		
BALANCE, 5/31/71				290 928 56			

(a) Adjustment (a) not posted to company books - Routine year-end adjustments made by outside accountant.

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by: a) LRB&M
b) Client and Examined by
Reviewed by LRB&M SR/SUP

Paul R. Dean & Co., Inc.
Officer's Personal Account - PRD 4 of 7
6/1/71 - 4/4/73

			DEBITS	CREDITS	JOURNAL DESCRIPTION AND OTHER COMMENTS
Balance, 6/1/72			290928.56		
1972 6/12	Emmanuel Kimmel	C 2943	16575.00	✓	Cashed @ Chem. NY
6/21	P. R. Dean	C 2985	6000.00	✓	Cashed @ Marine-Rock No endorsement
6/30	Morton Smookler	C 2999	2500.00	✓	check written to BEC ELECTRIC cashed in Syracuse N.Y. - No endorsement
7/6	Adams & Peck - L.R.	C 3007	8690.00	✓	100 Syntex
7/10	Red Carpet	C 3035	445.00	✓	- endorsed by Red Carpet in Nantucket
7/31	L.R. - Adams & Peck	C 3062	26145.00	✓	300 Syntex
7/31	L.R. - Adams & Peck	C 3063	8517.00	✓	1000 Syntex
7/31	L.R. - Adams & Peck	C 3064	34009.75	✓	4000 Syntex
8/3	L.R. - Adams & Peck	C 3073	43514.50	✓	5000 Syntex
8/3	L.R. - Adams & Peck	C 3077	13756.00	✓	1600 Syntex
8/3	P.R. Dean	C 3691	500.00	✓	check endorsed by Dean; by Andrew Parker - cashed in N.Y.C.
8/4	P.R. Dean	C 3082	1097.50	✓	check written to E. Kimmel endorsed by E. Kimmel, cashed in N.J.
8/7	L.R. - Adams & Peck	C 3082	1756.25	✓	200 Syntex
8/7	L.R. - Adams & Peck	C 3083	74119.45	✓	8500 Syntex
8/17	Paul Dean	C 3098	45000.00	✓	endorsed by Paul Dean for deposit - cashed Chem. Bank N.Y.
8/24	American Express	C 3101	574.00	✓	Total check 770.60

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by: a) LRB&M b) Client and Examined by
Reviewed by LRB&M SR/SUP

Paul R. Dean & Co., Inc.
Officer's Personal Account - PRD 5 of 7
6/1/71 - 4/4/73

			DEBITS	CREDITS	COMMENTS
6/28	Lunaqua	C3110	20.00	✓	
7/5	Red Carpet Travel	C3126	372.00	✓	
7/15	P. Dean	C3141	2000.00	✓	endorsed by P. Dean
9/18	P. Dean	C3142	2000.00	✓	✓ - signature questionable
7/8	Ron Virgo	C3108	1800.00	✓	endorsed by R. Virgo
7/13	Red Carpet	C3295	460.95	✓	
12/5	P. Dean	C3353	60000.00	✓	✓ Endorsed P.R.D #0662344681 Chem. NJ cashed check
7/5	2nd Natl of N Miami	C3354	50000.00	✓	Debit Memo - Wire Transfer
7/12	Red Carpet	C3367	372.00	✓	Total check 744.00
1973 4/4	P. Dean	C3432	75000.00	✓	✓ Endorsed by Paul Dean
4/23	F.M.L. Supply	C4017	400.00	✓	
4/24	Paul R. Dean	C4021	10000.00	✓	Debit Memo cleared credited to Dean - personal ac.
4/30	Paul Dean	C4031	10000.00		missing
7/13	Paul R Dean	C3774	3500.00	✓	endorsed by Paul R. Dean
1972 4/8	Cash	C379	100.00	✓	"Gave to Lugo" No endorsement
9/30	Cash	M4126	1000.00	✓	no endorsement
9/14	Cash	M4187	2650.00	✓	endorsed by T. Ostrowski (secretary)

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by:
a) LRB&M
b) Client and Examined by
Reviewed by LRB&M SR/SUP

Paul R. Dean & Co., Inc.
Officer's Personal Account - PRD 6 of 7
6/1/71 - 4/4/72

			DEBITS	CREDITS	COMMENTS
1972 6/8	Paul R. Dean	M 4/31	500.00 ✓		no endorsement - Cashd Ck.
6/16	P. Dean	M 114	500.00 ✓		No Endorsement - Cashed Ck
8/24	Paul R. Dean	M 121	5000.00 ✓		✓
9/22	Cash	M 145	500.00 ✓		✓
9/20	Mary L Dean	M 228	110.00 ✓		agreement to deduct monies by Mary P. Dean
11/30	Bessie Watkins	M 229	64.00 ✓		
12/4	Richard Turmen	M 231	128.40 ✓		
12/22	Rochester Tel	M 246	204.41 ✓		
12/22	Columbia G. & E.	M 245	589.75 ✓		
1973 1/15	Columbia G & E	M 234	651.03 ✓		Mortgage payment
2/20	The Travelers	M 336	400.00 ✓		
3/23	PRD loan	M 401 RE	2700.00 ✓		
3/28	Bessie Watkins	M 379	4000 ✓		
1972 9/3	Merrill, Lynch	C C R 30		491329.00	$400 Lynch
9/7	Merrill, Lynch	C C R 30		104 588.45	400 Lynch
9/7	Merrill, Lynch	C C R 30		509219.60	$500 Lynch
9/9	Merrill, Lynch	C C R 30		465 387.30	$700 Lynch
		C C R 30		350 126.50	

EXHIBIT 8 — Analysis of personal account of Paul R. Dean.

Date Prepared
Prepared by:
a) LRB&M
b) Client and Examined by
Reviewed by LRB&M SR/SUP

Paul R. Dean & Co. Inc.
Officer's Personal Account - PRD 7 of 7
6/1/71-4/4/73

			DEBITS	CREDITS	COMMENTS
1972					
10/12	Paul Dean	CCR 33		180000	
1973					
7/9	Argylant - Dean	CCR 42		500000	
1972					
8/1	Paul R. Dean	MCR 27		954000 (1)	
8/2	Paul R. Dean	MCR 27		1000000 (1)	Paul Dean ck. from Richard = Katy
10/16	P. R. Dean & Co	CCR 33		2000000	
12/31	Paul Dean	J2		1850000	Salary - June - Dec
7/10	Marine Midland Bank for Paul R. Dean	C 3033	2000000		Total check 20341.25 - Interest charged to company
	SUBTOTALS		24287575	19744905	
	Balance, 3/31/73 - DEBIT BALANCE			4542670	
	8/2/72 Loan transferred from A/C # 99			954000	
	SUBTOTAL			4638070	
	Adjustments:				
	Difference between sale price of Graphic Sciences and proceeds received			450000	
	Transfer of "Land Sales Receivable" per company books (Fla. Real Estate)			1186646	
	SUBTOTAL			5869716	
	Reclassification of notes receivable related to Florida real estate investment			(2965293)	
4/4/73	Balance per Assignee and Receiver Reports			5573187	

✓ Examined check
(1) Examined deposit ticket

IT

Date Prepared 5/24/73
Prepared by C & L Kubbehn
Reviewed by C & L SA/SLP

EXHIBIT 18 – Schedule of Stanley Dye – Loans to John Nichols.

Paul K. Dean & Co., Inc.
Loans to John L. Nichols
4/4/73

Summary of General Ledger Activity

Fiscal Period			Gen. Ledg. Account #	Cash Disbursements	Cash Receipts	Journal Entries	Balance Beginning	Balance Ending
INCEPTION	-	5/31/67	140	10000.00	<25000.00>		-0-	<15000.00>
6/1/67	-	5/31/68	160	36589.62	<67589.62>	<14000.00>	<15000.00>	<60000.00>
6/1/68	-	5/31/69	160	-0-	<25000.00>	4410.50	<60000.00>	<80589.50>
6/1/69	-	5/31/70	160	85315.00	<25000.00>	<25915.00>	<80589.50>	<46189.50>
6/1/70	-	5/31/71	160	65000.00	<65000.00>		<46189.50>	<46189.50>
6/1/71	-	5/31/72	251	246000.00	<76000.00>	<14060.40>	<46189.50>	109750.10
6/1/72	-	4/4/73	251	116350.00	<60000.00>	<14200.00>	109750.10	151900.10

P-17 Jt EV

SUMMARY:

INCEPTION	-	4/4/73		559252.62	<343587.62>	<63764.90>		151900.10

EXHIBIT 18

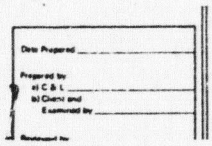
EXHIBIT 18 — Schedule of Stanley Dye — Loans to John Nichols.

Date Prepared 5/23/73
Prepared by C & L Kubbeler
Reviewed by C & L SR/SLP

Paul R. Dean & Co., Inc.
Loans to John L. Nichols
4/4/73

Balance per general ledger, 12/31/72			139,550.10
1/73	Marine Midland cash disbursements	8350.00	
2/73	Marine Midland cash disbursements	2500.00	
3/73	Chemical cash disbursements	41500.00	
3/73	Chemical cash receipts	<40000.00>	12350.00
	Balance, 4/4/73		151,900.10

EXHIBIT 18 — Schedule of Stanley Dye — Loans to John Nichols.



February 21, 1974

Justin L. Vigdor, Esq.
25 Main Street East
Rochester, New York 14614

Re: Paul R. Dean & Company, Inc. -
John L. Nichols Account

Dear Justin:

I have reviewed John Nichols' account directly with him and find that the adjustments indicated below should be made:

John Nichols Personal Account:		
Balance per books	$151,900.10	
Less: Check #41 drawn on Marine Midland 4/13/71 to Paul R. Dean charged to John L. Nichols in error	10,000.00	
Payroll credits per schedule	17,375.00	
Balance - adjusted		$124,525.10
Sande Broadcasting Account:		
Balance per books		25,000.00
Total		$149,525.00

I believe that John will agree with these revised figures. As far as we are concerned, we believe them to be correct.

Sincerely,

Stanley M. Dye

SMD:sc

Enc.

Cc: John Nichols

EXHIBIT 14 – Memo of Stanley Dye, dated 4-9-73.

PAUL R. DEAN & COMPANY, INC.
DEALERS IN TAX-FREE MUNICIPAL SECURITIES

TEL. 716 232-5520

1018 TEMPLE BUILDING
ROCHESTER, NEW YORK 14604

OK Pete Davis is writing them a letter.

Bill Mechem says Petina has been properly notified.

4/9/73

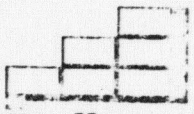
Defd. Exh B
2d
RmF
2-18-75

PlF EX 14 ~~8~~

EXHIBIT 14

LETTER of 4-9-73 from Paris to Michener, part of Exhibit 25.

40 CLINTON AVENUE NORTH, ROCHESTER, NEW YORK 14604 / 716-546-8525



Paris-Budlong-Esse Inc.
insurance

April 9, 1973

Mr. William Michener, Mgr.
Bond Dept.
Aetna Casualty & Surety Division
1200 Sibley Tower Bldg.
Rochester, New York 14604

Dear Bill:

This is to inform you at this time that there may be a Fidelity claim under policy #45F1526 BCA for the Paul R. Dean Co. Inc. This is to put Aetna Casualty & Surety on notice of the claim.

If you have any further questions please contact me at your convenience.

Very truly yours,

Peter N. Paris

Peter N. Paris
Vice President

PNP/bas

cc: Justin L. Vigdor, Esq.
25 E. Main St.
Rochester, New York 14614

Ex. #14 Admitted 7/9/74

MEMO of 5-14-73 from Aetna's home office, part of Exhibit 25.

B. J. Putnam, Supv., Rochester, New York, Claim Dept.

B. E. Baker, Senior Atty., HO Bond Claim

May 14, 1973

CD 45 FC 147441, PAUL R. DEAN AND CO., INC.

Dear Bernie,

Our cover is a stock brokers blanket bond discovery Form 14, effective 10-15-71, penal amount $250,000.

(1) Misplacement and mysterious disappearance is excluded from Insuring Agreement B.

(2) Insuring Agreement D is excluded.

(3) Insuring Agreement E is excluded.

(4) All trading loss is excluded.

(5) Loss of any endorsed negotiable security is excluded unless the loss is sustained within 30 minutes after the receipt or within 30 minutes prior to scheduled delivery or loss of any bearer instruments is excluded while retained on the premises overnight.

The bond applies with respect to covered loss sustained by the insured at any time, but discovered during the bond period.

Under Section 11 of the bond it shall be deemed terminated or cancelled as an entirety immediately upon the taking over of the insured by a receiver or other liquidator or by State or Federal Officials.

We understand that Austin L. Vigder was appointed assignee for the benefit of creditors on April 4, 1973.

The bond terminated April 4, 1973.

So far, there is no evidence, report or notice that the insured or any officer not in collusion had knowledge of information that Dean had committed any fraudulent or dishonest acts in the service of the insured or otherwise. The time for the insured to discover loss expired at the termination of the discovery bond.

Ex # 24 Ind 7/9/74

BEST COPY AVAILABLE

MEMO of 5-14-73 from Aetna's home office, part of Exhibit 25.

-2-
B. J. Putnam
May 14, 1973

Under Section 12 of the bond, when the bond was terminated by reason of the taking over of the insured by the assignee, for the benefit of creditors the assignee had, within 30 days, the right to give Aetna as underwriter, notice, that he desired under the bond an additional period of 12 months, within which to discover loss sustained by the insured prior to the effective date of such termination and shall pay an additional premium therefore.

At this point, the 30 days have expired and the assignee has not requested an additional period, nor has he paid an additional premium therefore.

The fact is that the assignee did not keep the discovered bond alive.

Loss discovered by the assignee in the absence of his compliance with the terms of the bond, request for extension, and payment of premium is not covered.

As the claim stands, from a claim viewpoint, since loss was not discovered by the insured during the bond period we have no alternative but to decline coverage for loss discovered by the assignee. Since any discovery by the assignee has to be subsequent to termination,

It appears to me that Vigdor came pretty close to requesting the required extension.

He furnished the agent with a demand letter from Lincoln Bank Attorneys that he fully comply with any and all terms and conditions of the bond and requested the Aetna agent on his behalf as assignee to take action as necessary to comply with the demand.

In lieu of complying with Section 12, the agent made the request that Vigdor be added as an additional insured and was advised by Mgr. Michener that this could not be accomplished since coverage ceased April 4, 1973.

It is possible that Vigdor will claim that his request to the agent of April 16, amounted to compliance with Section 12 and that he will pay premium when billed by the agent.

With reference to the Lincoln Bank and Attv. Burn's letter of April 12, 1973, the Aetna bond does not apply to dishonest acts of an insured.

Under Insuring Agreement A, our bond covers loss through the dishonest or fraudulent act of any employee. For an insured to exchange its worthless checks for stock worth $2,302,020 is not loss to the insured.

It is important to note that one security dealer said Paul R. Dean and Co. handled some of its bond debtedness on a retention or put option basis.

In other words, by contract Paul R. Dean and Co. repurchased bonds from the contractor when the bonds were released by their municipality. Paul R. Dean and Co. would resell at a profit or loss. Considering the

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MEMO of 5-14-73 from Aetna's home office, part of Exhibit 26.

fluxuations of the Municipal Bond market in recent years, Paul R. Dean and Co. could have sustained substantial loss in this way.

Such a loss is through trading and excluded by the terms of the bond.

Paul R. Dean and Co. dealt in Municipal Bonds. It was a small closely held corporation with virtually all employees offices.

If possible, please identify the officers and directors and the principal stockholders. Hopefully, this is a one man corporation and the acts of Dean, would be the acts of the insured.

Vigdor has claimed loss of $250,000 through the dishonesty of Paul Dean.

We would like to identify the specific and exact nature of each unauthorized act or acts alleged to have been dishonest resulting in loss to the insured, Paul R. Dean and Co., Inc.

We will look forward to receiving your further advices.

hh

cc: Raymond F. Chipman, Mgr., Rochester, New York, Claim (control copy)

MEMO of 5-15-73 from Aetna's home office, part of Exhibit 25.

Aetna
LIFE & CASUALTY

INTEROFFICE COMMUNICATION

TO B.J. Cattoni, Supv. Rochester, N.Y. Claim Dept.
FROM B.E. Baker, Senior Atty. H.O. Bond Claim
DATE 5-15-73
SUBJECT C.D. 45 FC 147441, Paul R. Dean & Co. Inc.

Thanks for information that on April 27 1973 creditors petitioned Paul R. Dean & Co. Inc into involuntary bankruptcy and that the petition was filed April 30 1973 Burns Sutter & Doyle are listed as attys for the creditors. Previously Paul R Dean & Co Inc declared insolvency and on April 4 1973 Justus Vigdor was appointed assignee for the benefit of creditors. This is a state proceeding and presently the insured is under federal bankruptcy proceedings.

With reference to my 10c of 5-14-73 suggest you do nothing but sit tight and await developments.

In the near future under Section two (11 USC 11) the court will require Vigdor to deliver property in his possession or under his control to the receiver or trustee appointed under the bankruptcy act. It remains to be seen whether or not such receiver or Trustee will seek an intervention under sec 12 of the bond, for claims loss through employee dishonesty.

Will look forward to further advices

BY B.E. Baker

Ex # 27 for ident 7/9/74

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LETTER of 6-14-73 from Justin L. Vigdor to Aetna, part of Exhibit 25.

LAW OFFICES OF
MARTIN, DUTCHER, COOKE, MOUSAW & VIGDOR
FOURTH FLOOR, GENESEE BUILDING
TWENTY-FIVE EAST MAIN STREET
ROCHESTER, NEW YORK 14614
CABLE ADDRESS: MARTHAR
716 454 3800

June 14, 1973

Mr. Bernard J. Putnam
Aetna Life & Casualty
Casualty & Surety Division
1200 Sibley Tower Building
Rochester, New York 14604

RE: Paul R. Dean & Company, Inc.
Pile Number C(D)45 FC 147441 RG

Dear Mr. Putnam:

In your letter of May 10, 1973 you indicated that you were making an investigation regarding our claim under the Paul R. Dean & Company fidelity bond.

This matter will be discussed in Federal Court next Tuesday and I would like to know, if possible, the results of this investigation before that time.

Sincerely yours,

Justin L. Vigdor
Receiver in Bankruptcy of
Paul R. Dean & Co., Inc., Bankrupt

JLV/ed

Ex # 28 Marked 7/9/74

BEST COPY AVAILABLE

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

COOPERS & LYBRAND

CERTIFIED PUBLIC ACCOUNTANTS

IN PRINCIPAL AREAS
OF THE WORLD

Justin L. Vigdor
Receiver in Bankruptcy for
Paul R. Dean & Co., Inc.

The attached Final Account showing inventories of assets and deferred expenses and liabilities as of June 19, 1973 and the related supporting schedules have been prepared from the books and records of Paul R. Dean & Co., Inc. and the Assignee and Receiver. These statements cover the activity of the Assignee for the Benefit of Creditors from April 4 through May 29, 1973 and of the Receiver in Bankruptcy from May 30 through June 19, 1973, the date on which the activities of the Receiver terminated and those of the Trustee in Bankruptcy commenced. As of such date all assets shown vested in said Trustee. The aforementioned statements have not been audited nor independently verified by us, and accordingly we do not express an opinion on them.

Coopers & Lybrand

Rochester, New York
July 9, 1973

EXHIBIT 32

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Justin L. Vigdor, Receiver in Bankruptcy for

Paul R. Dean & Co., Inc.

FINAL ACCOUNT

SCHEDULE A - INVENTORY OF ASSETS AND DEFERRED EXPENSES

(Unaudited)

June 19, 1973

	Amount	Detail Schedule Reference
Current assets:		
Cash	$ 100,861	A-1
Special cash - Attorney Account	10,000	A-2
Fidelity Bond Claim	250,000	A-3
Due from Securities Processing Services, Inc.	80,799	A-4
Tax refund claim	1,706	A-5
Other claims	3,600	A-6
Claims against banks:		
Lincoln First Bank of Rochester	2,306,250	A-7
Chemical Bank of New York	2,306,507	A-7
Cash advanced to Trustee in Bankruptcy	10,037	A-8
Fixed assets:		
Furniture and fixtures	None	A-9
Leasehold improvements	None	A-10
Automobile	10,000	A-11
Advances to officers and employees:		
Sundry employees	26,826	A-12
Paul R. Dean:		
Personal account	557,319	A-13
Sande Broadcasting Co. account	25,000	A-14
John L. Nichols:		
Personal account	151,900	A-15
Sande Broadcasting Co. account	25,000	A-14
Sundry assets:		
Investments:		
225 shares - Sixty Sutton Corp. (Apartment)	25,000	A-16
Frederick Hobbs Films	Indeterminate	A-18
48,000 shares - Halco Products Corp.	Indeterminate	A-19
Advances to Sande Broadcasting Co., Inc.	81,500	A-17
Due from John Sayre - Sande Broadcasting Co. account	40,000	A-14
Sundry advance	10,000	A-20
Promissory notes receivable	32,153	A-21
Contingent gain under repurchase contracts	Indeterminate	A-22
Net deferred expenses of Assignee and Receiver	12,912	A-23
	$6,067,370	

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Justin L. Vigdor, Receiver in Bankruptcy for

Paul R. Dean & Co., Inc.

FINAL ACCOUNT

SCHEDULE B - INVENTORY OF LIABILITIES

(Unaudited)

June 19, 1973

	Amount	Detail Schedule Reference
Accounts payable - trade	$ 16,911	B-1
Unpaid Receiver and Assignee expenses	6,016	B-2
Disputed claim - auto repair	2,120	A-11
Liability for customers' funds:		
City of Rochester	2,203,921	B-3
City of New York	23,978	B-4
Other municipalities, contractors, and individuals	470,926	B-5
Due banks:		
Lincoln First Bank of Rochester	3,354,494	B-6
Chemical Bank of New York	1,825,000	B-7
Due broker	27,121	B-8
Due employees	154,470	B-9
Withheld payroll taxes and sales taxes collected	1,614	B-10
	$8,086,571	

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Justin L. Vigdor,

Receiver in Bankruptcy for

Paul R. Dean & Co., Inc.

FINAL ACCOUNT

Schedules to Support Inventory of

Assets and Deferred Expenses

and Inventory of Liabilities

June 19, 1973

Sch. A-1 — Cash

Cash consists of the following:

Cash in Bank	
Bankers Trust Co. of Rochester:	
Checking account	$ None
Special Interest account	100,861
	$ 100,861

Sch. A-2 — Special Cash - Attorney Account

At a date subsequent to April 4, 1973, a boat owned by the Company was sold by Paul R. Dean, the former president of the debtor. No court order approving this sale was obtained. The Trustee will make claim for the proceeds, which are presently held by Mr. Dean's personal attorney in a Special Attorney Account in Rochester, New York. An order was served directing that this sum be turned over to the Receiver, but the claim is being disputed by Mr. Dean. This transaction may be subject to nullification in the event that the boat can be shown to have a fair market value of more than $10,000.

Sch. A-3 — Fidelity Bond Claim

The Receiver has filed a claim with Aetna Casualty Company for loss in excess of the $250,000 coverage under its bond, and this claim will be pursued by the Trustee.

Sch. A-4 — Due From Securities Processing Services, Inc.

This organization acted as the Company's service bureau, and also extended credit to the Company under a margin arrangement. It is expected that the Bankrupt estate will recover $80,799 when the account is closed. Of this sum, $67,633.13 is in the hands of the Sheriff of New York County, subject to an order of attachment in a New York court action brought by Gorlin-Okun, Inc. A proceeding is pending to vacate this order.

Sch. A-5 — Tax Refund Claim

The Company does not appear to be liable for any Federal income taxes, nor are any Federal tax refunds due.

A claim for refund of New York State Franchise Taxes for $1,706 has been filed with the New York State Tax Commission.

Sch. A-6 — Other Claims

The Company's general insurance policies have been presented to the carriers for cancellation resulting in premium refunds due of approximately $750.

The Company has an action pending against Strader & Company, Inc., a brokerage firm in Lynchburg, Virginia in the amount of $2,850.

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Sch. A-7 — Claims Against Banks

Lincoln First Bank of Rochester

During April, 1973 Lincoln First Bank preferentially re-acquired 15,000 shares of Xerox Corporation stock, belonging to the Company, from a broker to whom the Company had pledged the stock as collateral for a margin loan of $850,000. The Receiver takes the position that this act constitutes a voidable preference, and the Trustee will attempt to recover these shares from Lincoln First Bank. The market value of these shares at June 19, 1973 was $2,306,250. Also, see Sch. B-6 in this connection.

Chemical Bank of New York

On March 22, 1973 the Company delivered to Chemical Bank of New York 15,000 shares of Xerox stock as collateral for a loan of $1,850,000 made to the Company by the bank on March 21, 1973. The Receiver takes the position that since these shares were delivered for past consideration, the bank has unlawfully sought to prefer itself. The Receiver has made demands upon the bank for the return of these shares, and after being appointed Receiver has served upon Chemical Bank a copy of the order of appointment containing turn-over directions. The market value of these shares at June 19, 1973 was $2,306,250. Also, see Sch. B-7 in this connection.

The Company's checking account was closed by the bank on April 6, 1973. The closing balance of $256.91 was not sent to the Receiver. The Trustee will pursue these claims against Chemical Bank.

Sch. A-8 — Cash Advanced to Trustee in Bankruptcy

A Trustee account was opened at Marine Midland Bank-Rochester, New York with the amount of said advance.

Sch. A-9 — Furniture & Fixtures

The contents of the Company's Rochester, New York office were sold at auction on June 18, 1973 for the sum of $2,766.05, plus sales tax.

The contents of the Company's Wall Street office were sold on May 1, 1973 for the sum of $2,400, plus sales tax.

Sch. A-10 — Leasehold Improvements

The Receiver terminated the occupancy by the Company of its two offices. Leasehold improvements made to these offices by the Company have no value although they were carried as an asset on the Company's books.

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Sch. A-11

Automobile

The Company owns a 1971 Maserati automobile which is stored in Miami, Florida. A dealer in Florida claims a repair bill of $2,119.67 which sum is disputed by Receiver, and will be rejected by Trustee. The Company carried this car at a book value of $15,185. The highest offer to date was $10,000 and the court's permission is being sought to sell it for this price.

Sch. A-12

Advances to Sundry Employees

Advances to Sundry Employees are as follows:

Ellsworth Shafto	$ 18,871.25
Edward Romanoski	79.49
Frederick Fox	1,500.00
Matthew Akers	5,096.61
Robert O'Brien	1,278.81
	$ 26,826.16

Sch. A-13

Advances to Paul R. Dean

Company advances to Mr. Paul R. Dean, net of repayments made by Mr. Dean, amounted to $557,319 as of the date of the original Assignment for the Benefit of Creditors.

Sch. A-14

Investments and Advances

The Company has made advances to the following individuals for personal investments in Sande Broadcasting Co. Inc.

Paul R. Dean	$ 25,000
John L. Nichols	25,000
John Sayre	40,000

Sch. A-15

Advances to John L. Nichols

Company advances to Mr. John L. Nichols, net of repayments made by Mr. Nichols, amounted to $151,900 as of the date of assignment.

Sch. A-16

Apartment

The Company owns 225 shares of the capital stock of Sixty Sutton Corporation, a co-operative apartment building. This investment is being carried at the Company's cost of $25,000.

Sch. A-17

Advances to Sande Broadcasting Co. Inc.

During the period of March, 1972 to the date of assignment, advances of $85,000 were made by the Company to Sande Broadcasting Co. Inc. One repayment was made in July of 1972 amounting to $3,500, leaving a balance due of $81,500.

Sch. A-18

Investment in Frederick Hobbs Films

Investment in Frederick Hobbs Films is carried at cost of $6,000 in the debtors books. Any present value is indeterminate

Sch. A-19

Investment in Halco Products Corp.

Investment in Halco Chemical Co. (now Halco Products Corp.) is carried at cost of $50,000 in the debtors books. These are unregistered shares and may not be sold in a normal manner. The stock is traded on a very limited basis in the New York City over-the-counter market. The quoted bid and asked price on June 19, 1973 was 3/8 and 7/8.

Sch. A-20

Sundry Advance

The sundry advance (demand for payment of which has been made) consists of the following:

Ivy Kimmel 16 Colgate Road Maplewood, New Jersey	$10,000.00

The Trustee will pursue this claim.

Sch. A-21

Promissory Notes Receivable

The Company holds promissory notes receivable as follows:

Charles Sladden, Jr. 2111 East Avenue, Apt. F Rochester, New York	$ 2,500.00
Equitable Development Corp. 1451 North Bayshore Drive Miami, Florida	29,652.93
	$32,152.93

Demands for these sums have been made by the receiver and action will be commenced by Trustee to recover these sums.

Sch. A-22

Contingent Gain Under Repurchase Contracts

The Company, in its normal course of business, sold Municipal Bonds to a number of corporations and individuals under agreements to repurchase them at the same price at which the bonds were sold. Possible gain upon fulfillment of these obligations is a maximum of $99,893. A New York City municipal bond firm has been designated agent of the Bankrupt's Estate in an effort to enforce these repurchase obligations. Guaranteed minimum recovery will be $1,375 of which one thousand dollars is presently shown in Receiver income in Schedule A-23.

Sch. A-23

Net Deferred Expenses of Assignee and Receiver

Net Deferred Assignee Expenses:

A cash basis statement of income and expenses incurred by the Assignee from April 4, 1973 through May 29, 1973 (the date Receivership commenced) is as follows:

Income:

Bond interest receipts	$ 997.84
Underwriting profits received	1,041.25
Profit on sale of Agawam, Mass. Bonds	1,295.00
Pair off and difference check on L.A. 6 1/8's due 5/15/2000	1,000.00
Refunds	50.64
Total Income	$ 4,384.73

Expenses:

Fidelity Bond Premium	5,000.00
Appraisals	175.00
Advances for professional services	9,100.00
Apartment maintenance	423.00
Employee wages	3,164.12
Travel and office expenses	647.73
Payroll taxes	101.85
Auto insurance	588.00
Office rent	1,380.82
Telephone	282.72
Sundry other	53.17
Total Expenses	20,916.41
Net Deferred Assignee Expense	$16,531.68

Sch. A-23
con't.

Net Deferred Expenses of Assignee and Receiver

Net Deferred Receiver Income:

A cash basis statement of income and expenses incurred by the Receiver from May 30, 1973 through June 19, 1973 is as follows:

Income:

Deposit-fulfillment of repurchase contracts	$ 1,000.00
Hospital insurance refund	384.24
Assignee fidelity bond rebate	3,067.00
Refunds-other	6.00
Total Income	4,457.24

Expenses:

Employee wages	510.00
Life insurance on Paul R. Dean to preserve $100,000 face value policy	234.60
Apartment maintenance	24.74
Office supplies	67.98
Total Expenses	837.32
Net Deferred Receiver Income	$ 3,619.92
Net Deferred Expenses of Assignee and Receiver	$12,911.70

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

SCHEDULE B-1

ACCOUNTS PAYABLE

Singer Business Machines, 211 East 43rd Street, New York, New York 10017	$ 17.68
David Allen Service, Inc., 2350 Fifth Ave., New York, N. Y. 10037	27.77
American Express, P.O. Box 13778, Pheonix, Arizona 85002	3,369.58
F. B. Ashplant & Co., 40 Wall Street, New York, New York 10005	878.42
Blue List, 345 Hudson Street, New York, New York 10014	276.52
Bond Buyer, 77 Water Street, New York, New York 10014	318.45
Carent, 214 Lake Avenue, Rochester 14608	310.30
Community Chest, 70 North Water Street, Rochester 14604	27.50
Con Edison, P.O.Box 100, Cooper Station, New York, New York 14603	18.10
R.E. Daily & Co., 19200 W. Eight Mile Rd., P.O.Box 4948, Detroit, Mich.	281.44
Eddie's Chop House, 367 Main Street East, Rochester 14604	96.69
F. W. Dodge, P.O. Box 2727, Church St. Station, New York, New York 10007	1,729.22
Goldsmith Brothers, 77 Nassau Street, New York, New York 10038	42.51
Great Bear Spring, 51 Madison Avenue, New York, New York 10010	25.41
Albert Frank Guenther, 61 Broadway, New York, New York 10006	275.96
Hertz, Box 8860, 75 Ajax Road, Rochester 14624	91.20
Internal Revenue Service, P.O. Box 700, Holtsville, New York 11742	179.08
J. K. Lasser & Co., 730 Powers Building, Rochester 14604	2,480.00
Lincoln Rochester Trust Co., Consumer Loans, Midtown, Rochester 14604	408.50
Macke Williamson, 160 Mt. Hope Avenue, Rochester 14605	53.16
Massoletti, 70 Pine Street, New York, New York 10005	8.04
Mobil Oil Corp., P.O. Box 4578, Boston, Mass. 02107	399.59
Monroe, 550 Central Avenue, Orange, New Hampshire 07051	105.11
Moody's Investors Service, P.O. Box 1188, New York, New York 10008	802.50
New York Telephone, P.O.Box 1946, New York, New York 10001	2,601.44
P.D.Q. Coffee, 155 West 19th Street, New York, New York 10011	[illegible].00
The Racquet Club, Harbor Island, Miami Beach, Florida 33141	[illegible].27
Rochester Telephone Corp., 100 Midtown Plaza, Rochester 14604	582.40
Red Carpet Travel, 100 Triangle Building, Rochester 14604	242.99
Rochester Yacht Club, P.O.Box 4707, Charlotte Station, 14612	112.35
Edward Romanoski, 137 Dayton Avenue, Somerset, New Jersey 08873	186.73
Scrantom's, 334 East Main Street, Rochester 14604	16.35
Singer, Dept. 11678041, P.O.Box 2138, San Leandro, California	48.15
60 Sutton Corp., 60 Sutton Place South, New York, New York 10022	202.50
60 Sutton Place Garage Corp., 60 Sutton Place S., N. Y., N. Y. 10022	63.60
Stillson Main Ramp, 23 Stillson Street, Rochester 14604	56.00
Jimmy Weston, 131 East 54th Street, New York, New York 10022	22.92
Temple Building, 950 Temple Building, Rochester 14604	390.50
Wall Street Journal, Chicopee, Massachusetts 01021	35.00
	$16,910.93

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Sch. B-2 Unpaid Receiver and Assignee Expenses

Rochester Telephone - telephone	$ 280.69
Temple Building - rent	624.50
Joseph Yadgaroff - appraisal	75.00
Midtown Copy Center - stationery	33.91
Coopers & Lybrand - accounting:	
May 1 thru June 8, 1973	2,500.00
June 9 thru July 9, 1973	975.00
Vito Cassan - telephone	47.56
Martin, Dutcher, et al - sundry disbursements	699.73
I. Schoolman Associates - auctioneer	281.25
Kathryn Poluch - payroll, 6/18 and 6/19	68.00
Accrued payroll taxes:	
Social security	214.86
New York State unemployment insurance	42.66
New York State disability insurance	14.32
Federal unemployment insurance	158.09
	$6,015.57

Sch. B-3 Liability for Customers' Funds - City of Rochester

Contractor:

Great Lakes Dunbar - Rochester 4664 Lake Ave. Rochester, N.Y. 14612	$2,126,425.00
Dwyer Electric Co. 252 Tremont St. Rochester, N.Y. 14608	4,723.90
Connors Haas 474 Thurston Rd. Rochester, N.Y. 14619	20,360.00
DiFiore Construction 150 Pool St. Rochester, N.Y. 14606	9,200.00
McEvily Plumbing & Heating 223 Smith St. Rochester, N.Y. 14608	43,212.50
	$2,203,921.40

Sch. B-4 Liability for Customer Funds - City of New York

On March 12, 1973, the Company issued a check to the New York City Department of Ports and Terminals in the amount of $23,978.13 in payment for securities sold on behalf of the Comptroller of the City of New York. This check was returned to the City by the bank for insufficient funds.

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Sch. B-5 Liability for Customers' Funds - Other
Municipalities, Contractors, and Individuals

Municipalities:		
Tioga Central School District Tioga Center, New York 13845		$ 9,500.00
Penfield Central School District Penfield, New York 14526		
Bacher Electric Co. 2481 Huber Rd. Fairport, N.Y. 14450	$16,055.50	
McEvily Plumbing & Heating 228 Smith St. Rochester, N.Y. 14608	11,232.50	
Wm. J. Schmitt, Inc. 60 Saginaw Dr. Rochester, N.Y. 14623	10,516.00	37,804.00
Contractors:		
Holler Brothers, Inc. 200 Roosevelt Ave. Tonawanda, N.Y. 14150	50,000.00	
Insana Construction Co. 33251 Curtis Blvd. Eastlake, Ohio 44094	65,381.06	
Gorlin-Okun, Inc. 112 E. 19th St. New York, N.Y. 10003	64,412.50	
McEvily Plumbing & Heating 228 Smith St. Rochester, N.Y. 14608	10,000.00	
Di Fiore Construction 150 Pool St. Rochester, N.Y. 14606	48,334.58	238,128.14
Individuals:		
JoAnne Bacher c/o Bacher Electric Co. 2481 Huber Rd., Fairport, N.Y. 14450	20,950.00	
Robert Bacher c/o Bacher Electric Co. 2481 Huber Rd., Fairport, N.Y. 14450	20,475.00	
Vincent Lawless 51 Robinson St. North Tonawanda, N.Y. 14120	38,585.70	
Pauline Brigham 535 Forrest Lawn Rd. Webster, N.Y. 14580	10,106.30	
Bertha Lawless c/o Nichols, 3901 East Ave. Rochester, N.Y. 14618	95,377.00	185,494.00
		$470,926.14

Sch. B-6

Due Lincoln First Bank of Rochester
One Lincoln Square
Rochester, New York 14604

The Company owes Lincoln First Bank of Rochester $2,502,020 for various checks returned to Lincoln by Chemical Bank of New York due to insufficient funds. Lincoln also paid Bear, Stearns & Co. $852,473.71 to reacquire 15,000 shares of Xerox Corporation stock which the Company had previously purchased through Lincoln. Bear, Stearns & Co. was holding the stock as collateral for an $850,000 margin loan obtained by the Company. The Company's total liability to Lincoln is $3,354,493.71 ($2,502,020.00 and $852,473.71). Also see Sch. A-7 in this connection.

Sch. B-7

Due Chemical Bank of New York
20 Pine Street
New York, New York 10015

Chemical Bank of New York granted the Company a loan on March 21, 1973 amounting to $1,850,000 to cover an overdraft in the Company's checking account, as of that date. Chemical subsequently reduced the loan by charging the checking account with $25,000 on March 28, 1973, leaving a balance due Chemical Bank of $1,825,000.

On March 2[illegible], 1973 Chemical Bank received from the debtor 15,000 shares of Xerox Corporation stock as collateral for this loan. It is believed that Chemical Bank either has sold or is planning to sell 12,000 shares of this stock to liquidate the loan. The Receiver has made demands upon Chemical Bank for the return of 3,000 remaining shares. Also see Sch. A-7 in this connection.

Sch. B-8

Due Broker

The Company owes the firm of Leperca, de Neuflize & Co., 345 Park Ave., New York, N.Y. 10022, $27,120.53 as a result of a loss realized on the sellout of 3,400 shares of Xerox stock purchased on March 21, 1973.

FINAL REPORT OF STANLEY DYE, dated 7-9-73.

Sch. B-9 Due Employees

Sheila Doyle - wages for 4/2 and 4/3 301 E. 62nd St., New York, N.Y. 10021	$ 76.00
Vito V. Guerriero - wages for 4/2 and 4/3 657 Clarence Ave., Bronx, N.Y. 10465	126.92
William Hartman - wages for 4/2 and 4/3 448 E. 78th St., New York, N.Y. 10021	60.00
Edward Romanoski - wages and commissions (In an action begun by Mr. Romanoski, the amount claimed is $13,290.80) 137 Dayton Ave., Somerset, N.J. 08873	13,184.74
Ellsworth M. Shafto III - wages for 4/2 and 4/3	384.60
- claim for breach of contract and unpaid bonuses (disputed by Receiver) 6 Canterbury Rd., Livingston, N.J. 07039	140,000.00
Kathryn Poluch - wages for 4/2 and 4/3 and unpaid vacation 472 Oxford St., Rochester, N.Y. 14607	373.84
Teresa M. Bemis - wages for 4/2 and 4/3 and unpaid vacation 36 Clairmount St., Rochester, N.Y. 14621	263.72
	$154,469.82

Sch. B-10 Withheld Payroll Taxes and Sales Taxes Collected

Federal withholding and social security	$ 790.15
New York State withholding	124.60
New York City withholding	343.07
New York sales tax	356.41
	$1,614.23

LETTER of 7-19-73 from Vigdor to Aetna, part of Exhibit 25.

LAW OFFICES OF
MARTIN, DUTCHER, COOKE, MOUSAW & VIGDOR
FOURTH FLOOR, GENESEE BUILDING
TWENTY-FIVE EAST MAIN STREET
ROCHESTER, NEW YORK 14614
CABLE ADDRESS MACHAR
716-454-3480

WILLIAM MacFARLANE (1881-1969)
HARRY Z. HARRIS (1892-1968)
DARROW A. DUTCHER (1911-1972)

JOSEPH W. MARTIN
GEORGE W. COOKE
DELON F. MOUSAW
JUSTIN L. VIGDOR
HERBERT W. VANDEN BRUL
JAMES W. RICHARDS
J. WILLIAM REEVES
WARREN H. HEILBRONNER
LUTHER W. MILLER
MERWYN M. KROLL
MARTIN S. WEINGARTEN
DAVID H. BROCKWAY
MICHAEL D. NOONAN

CYRIL L. KENDALL
OF COUNSEL

SHELDON EVANS
RICHARD F. ANDERSON
MELVIN H. PIZER
JOEL N. KRANE
KENNETH D. LICHT
JOHN W. CROWE
JOHN J. VILLENEUVE

July 19, 1973

Mr. Bernard J. Putnam
Claim Supervisor
Aetna Life & Casualty - Casualty & Surety Division
1200 Sibley Tower Building
Rochester, New York 14604

Re: Paul R. Dean and Company, Inc.
File Number: C(D) 45 FC 147441 RG

Dear Mr. Putnam:

This will confirm our telephone conversation of July 18th, 1973 in which I inquired of you why we had not heard from you since my letter of June 14th, and whether or not there was anything that your Company was lacking in order to settle the claim on the above fidelity bond issued to the Paul R. Dean and Company, Inc.

You indicated to me that you did not know what more, if anything, was needed and would take the matter up with your Home Office. I advised you that I was acting as co-counsel to Mr. Carges, the court appointed Trustee, and that we have been ready and willing to furnish any additional information that you might require in order to effect a prompt and expeditious settlement of this claim without the necessity of an action on the bond.

I look forward to hearing from you or your Home Office as soon as possible.

JUL

Very truly yours,

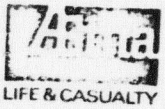
Justin L. Vigdor

Justin L. Vigdor

JLV:emc

Ex # 29 for ident 7/9/74

LETTER of 7-20-73 from Aetna to Vigdor,
part of Exhibit 25.



July 20, 1973

Justin L. Vigdor, Esquire
25 Main Street East
Rochester, New York 14614

RE: Paul R. Dean and Company, Inc.
File Number - C(D)45 FC 147441 RG

Dear Mr. Vigdor:

In your telephony call of July 18, 1973, you intimated we should be responding to a claim previously filed. There seems to be a misunderstanding. In response to your letter of April 27, 1973, we indicated in our letter of May 10, 1973, the possible application of certain conditions and exclusions of the bond and that we would not make a final determination until necessary information had been received.

You will realize that the "Notice of Discovery of Loss Form" is not a Proof of Loss and that a formal statement of claim is necessary in accordance with the conditions of the bond. (See the caveat at the top of the Notice of Discovery of Loss Form.)

In direct response to your question what is required, we must again refer you to the conditions of the bond. For your convenience, we enclose a Proof of Loss Form which you may submit or alternatively you may submit such other appropriate summary you wish. Which ever summary form is used, it should be supported with whatever evidence you have of a covered loss.

You will understand that our furnishing a Proof of Loss Form and any attention or investigation by us necessarily is without prejudice to anyone's rights and is not in any way to be a waiver of any of the terms and conditions of the bond. And, to avoid any misunderstanding, we must again direct your attention to the terms and conditions of the bond and particularly to the coverage period, Exclusions and Sections 11 and 12 - all as pointed out in our letter to you of May 10, 1973.

Sincerely,

Bernard J. Putnam
Claim Supervisor

BJP:jmc

Enc.

Ætna Life Insurance Company/ The Ætna Casualty and Surety Company/ The Standard Fire Insurance Company

Ex # 30 for ident 7/9/74

LETTER of 7-23-73 from Vigdor to Paris,
part of Exhibit 25.

July 23, 1973

Mr. Peter Paris
Paris, Budlong, Esse, Inc.
40 Clinton Avenue North
Rochester, New York 14604

RE: Paul R. Dean & Co., Inc.

Dear Peter:

I am enclosing copies of my entire file of correspondence with Mr. Putnam concerning the Aetna Fidelity Bond claim.

Anything you can do to specifically find out what they want to know to speed the claim would be greatly appreciated.

Also, could you please arrange to get the Receiver Bond refund.

Thank you very much for your assistance.

Very truly yours,

Justin L. Vigdor

JLV/kp
Enc.

cc: Peter

LETTER of 7-27-73 from Vigdor to Aetna, part of Exhibit 25.

LAW OFFICES OF
MARTIN, DUTCHER, COOKE, MOUSAW & VIGDOR
FOURTH FLOOR, GENESEE BUILDING
TWENTY-FIVE EAST MAIN STREET
ROCHESTER, NEW YORK 14614
CABLE ADDRESS MACHAR
716-454-3480

WILLIAM MACFARLANE (1882-1960)
HARRY Z. HALL (1892-1962)
DARROW A. DUTCHER (1901-1972)

JOSEPH W. MARTIN
GEORGE W. COOKE
DEAN F. MOUSAW
JUSTIN L. VIGDOR
HERBERT W. VANDEN HEUVEL
JAMES K. RICHARDS
J. WILLIAM REEVES
WARREN H. HEISINGER
LUTHER W. MILLER
MELVYN M. PRICE
MARTIN S. WEINGARTEN
DAVID H. BRUFF
MICHAEL D. HOGAN

CYRIL L. KENDALL
OF COUNSEL

SHELDON EVANS
RICHARD F. ANDERSON
MELVIN H. PIZER
JOEL N. FRANE
KENNETH D. LIGHT
JOHN W. CROWE
JOHN J. VILLENEUVE

July 27, 1973

Mr. Bernard J. Putnam
Claim Supervisor
Aetna Life & Casualty - Casualty & Surety Division
1200 Sibley Tower Building
Rochester, New York 14604

Re: Paul R. Dean and Company, Inc.
File Number: C(D) 45 FC 147441 RG

Dear Mr. Putnam:

I regret that I am, to some extent, still confused by our recent correspondence and by your vague reference as to what is needed to process the claim in the above matter.

Under the circumstances, I formally accord to you or any other representative, to meet with the trustee in bankruptcy, the independent accounting firm for the trustee and myself, at any time at your convenience, in order to review the books and records of the Dean Co. which completely show the covered loss in excess of the policy.

Will you kindly let me know when you would like to meet.

JUL 30 1973

Very truly yours,

Justin L. Vigdor

JLV:c ..c

Certified Mail
Return Receipt Requested

Ex. # 31 In evi 7/31/74

LETTER of 8-14-73 from Vigdor to Aetna, part of Exhibit 25.

LAW OFFICES OF
MARTIN, DUTCHER, COOKE, MOUSAW & VIGDOR
FOURTH FLOOR, CHESSLEY BUILDING
TWENTY-FIVE EAST MAIN STREET
ROCHESTER, NEW YORK 14614
CABLE ADDRESS: MARTHOR
TELEPHONE 546-1400

August 14, 1973

Mr. Bernard J. Putnam
Claim Supervisor
Aetna Life & Casualty & Surety Division
1200 Sibley Tower Building
Rochester, New York 14604

Re: Paul R. Dean and Company, Inc.

Dear Mr. Putnam:

This will summarize the meeting which we had in my office on August 13th, at which time I furnished you with a copy of my final account as Assignee for the Benefit of Creditors and as Receiver in Bankruptcy for the Paul R. Dean and Company for the period from April 4th, 1973 through June 19th, 1973, as well as a copy of a Brokers Blanket Bond for the Paul R. Dean Company which I had in my file and at which time I displayed to you certain checks showing gambling losses sustained by Paul R. Dean in May of 1972 and in July of 1972.

In the course of our meeting, it became clear that the bond, which I had obtained from the files of the company, was not on the same form as the specimen bond to which you were referring from your file and that the paragraphs 11 and 12, referred to by you in your recent correspondence, were not contained in the bond which was in my file. You indicated that you would review this matter and communicate with me further. You indicated further, that paragraphs 11 and 12 of the specimen bond to which you were referring brought about an automatic cancellation and required a recent request for additional time for discovery by the Receiver.

Please be advised that I believe all necessary and requisite notice has been given by Paris, Budlong, Esse Inc., by phone and by letter, and by letters from me in my capacity as Assignee and Receiver and co-counsel for the Trustee and by my filing the notice of discovery forms in April 1973 and by newspaper publicity, copies of which are in your file.

Ex #32 Admitted 7/9/74

BEST COPY AVAILABLE

LETTER of 8-14-73 from Vigdor to Aetna, part of Exhibit 25.

Mr. Putnam

August 14, 1973

I hereby renew the offer contained in my last letter to you, dated July 27th, 1973, to permit you or any other representative of your company, to meet with us to review the books and records of the Dean Company to verify the fact that covered losses in excess of the bond limit occurred prior to April 4th, 1973.

We intend to strenuously contest any effort on the part of the bonding company to resist payment of this bona fide claim resulting from the activities of the insured's former employee, Paul Dean.

Sincerely yours,

Justin L. Vigdor

JLV:cmc

Certified Mail
Return Receipt Requested

LETTER of 8-29-73 from Vigdor to Aetna, part of Exhibit 25.

WILLIAM MacFARLANE (1881-1969)
HARRY Z. HARRIS (1892-1968)
DARROW A. DUTCHER (1911-1972)

GEORGE W. COOKE
DELON F. MOUSAW
JUSTIN L. VIGDOR
HERBERT W. VANDEN BRUL
JAMES W. RICHARDS
J. WILLIAM REEVES
WARREN H. HEILBRONNER
LUTHER W. MILLER
MERWYN M. KROLL
MARTIN S. WEINGARTEN
DAVID H. BROCKWAY
MICHAEL D. NOONAN

LAW OFFICES OF
MARTIN, DUTCHER, COOKE, MOUSAW & VIGDOR
FOURTH FLOOR, GENESEE BUILDING
TWENTY-FIVE EAST MAIN STREET
ROCHESTER, NEW YORK 14614
CABLE ADDRESS MACHAR
716-454-3480

JOSEPH W. MARTIN
CYRIL L. KENDALL
OF COUNSEL

SHELDON EVANS
RICHARD F. ANDERSON
MELVIN H. PIZER
JOEL N. KRANE
KENNETH D. LICHT
JOHN W. CROWE
JOHN J. VILLENEUVE

August 29, 1973

Mr. Bernard J. Putnam
Claim Supervisor
Aetna Life & Casualty & Surety Division
1200 Sibley Tower Building
Rochester, New York 14604

Re: Paul R. Dean and Company, Inc.

Dear Mr. Putnam:

On August 14th I wrote you a letter summarizing the meeting we had in my office on August 13th with regard to the above. At that time you indicated you would be discussing the matter with your Home Office and then report back to me.

I would appreciate your advising me the result of your review and discussion of this matter as soon as possible.

Sincerely yours,

Justin L. Vigdor

JLV:emc

Ex # 33 Identified 7/9/84

**AETNA'S DENIAL OF COVERAGE of 9-4-73,
part of Exhibit 25.**

Aetna
LIFE & CASUALTY

Casualty & Surety Division
1700 Sibley Tower Building
Rochester, New York 14604
454-1550

September 4, 1973

Mr. Justin L. Vigdor
25 Main Street East
Rochester, New York 14614

RE: 45 F 1526 BCA - Paul R. Dean & Co., Inc.

Dear Mr. Vigdor:

This will acknowledge receipt of your letter of August 14, 1973. Aetna denies that it has seen or received any reasonable evidence of any bona fide claim under bond 45 F 1526 BCA resulting from the activities of Paul Dean or others.

Among other things, the bond is for the use and benefit only of the insured named in the declarations. The bond is in writing and speaks for itself as to terms and provisions.

Paul R. Dean & Company's concealment from Aetna of the true financial situation of the corporation and all or part of presently condemned transactions at the time it applied for and obtained from Aetna the execution and delivery of the renewal bond, was a fraud on Aetna which renders the bond void.

The bond terminated as to any employee immediately upon the discovery of the first alleged dishonest or fraudulent act on the part of such employee.

The acts claimed as fraudulent or dishonest were a matter of record and were authorized or ratified by the board of directors.

Aetna was not given notice at the earliest practicable moment after discovery of any loss.

Aetna has never been furnished with an affirmative Proof of Loss with full particulars.

The bond applies only with respect to covered loss sustained by the insured at any time but discovered during the bond period. The bond was terminated or cancelled immediately upon the taking over of the insured by a receiver or other liquidator.

The bond excludes any loss resulting from trading with or without

Ex #24 Pltf 7/1/74

BEST COPY AVAILABLE

AETNA'S DENIAL OF COVERAGE of 9-4-73, part of Exhibit 25.

knowledge of the insured in the name of the insured or otherwise.

The bond excludes loss resulting from the act or acts of any person while acting in the capacity of a member of the board of directors and the officers of the corporation were its directors.

Each of the acts complained of which was done, was the act of Paul R. Dean & Co., Inc. done at the direction or with the approval of its controlling authority and that the losses, if any, were sustained in carrying on the business of Paul R. Dean & Co., Inc. and that none of the said alleged losses is a loss within any of the coverages of the bond claimed on.

In addition to the above, Aetna reserves the right to assert other good and valid defenses presently known or which may come to light in the future.

Please be advised that we cannot make any payment in the matter.

Very truly yours,

Bernard J. Putnam
Claim Supervisor

BJP:jmc

EXHIBIT 1 – Stipulations.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff,

Civil Action # 74-127

-vs-

AETNA CASUALTY & SURETY COMPANY,

Defendant.

STIPULATION NO. 1

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc. and the attorneys for the defendant Aetna Casualty & Surety Company, that the defendant admits those allegations contained in Paragraphs of the plaintiff's complaint marked "2", "3" and "4".

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

BY _____

WINCHELL, CONNNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

BY _____

EXHIBIT 1

EXHIBIT 1 — Stipulations.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff,

-vs-

AETNA CASUALTY & SURETY COMPANY,

Defendant.

Civil Action # 74-127

STIPULATION NO. 2

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc. and the attorneys for the defendant Aetna Casualty & Surety Company, that the attachments A and B annexed to the plaintiff's complaint are true and complete copies of the ~~"original bond"~~ Brokers Blanket Bond # 45F 1259 BC and the ~~"renewal bond"~~ Stock Brokers Blanket Bond # 45F 1526 BCA issued by the defendant Aetna Casualty & Surety Company.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

BY _____

WINCHELL, CONNNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

BY _____

EXHIBIT 1 — Stipulations.

RJP:dr 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in
Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 3

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that the ~~annexed~~ list attached to plaintiff's answers to interrogatories is a true and complete list of all claimants in the Paul R. Dean & Co., Inc., bankruptcy proceeding and that copies of the "Proof of Claim" forms filed with the Bankruptcy Court at Rochester, New York, in the bankruptcy of Paul R. Dean and Co., Inc., BK7-813 may be entered as evidence.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R H Connors

BK

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 6

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that:

If Great Lakes-Dunbar-Rochester, a joint venture, ("Great Lakes"), were called upon to testify upon the trial of this action by an officer or employee of said joint venture, said witness would testify that this joint venture pursuant to construction contracts with the City of Rochester, ("City"), had over the period from June 3, 1970 to October 16, 1972, built up cash retainages in the aggregate amount of $2,126,425.00 and had elected to post municipal bonds in lieu of those cash retainages. Paul R. Dean & Company, Inc., ("Dean & Co.") was responsible for posting such municipal bonds with the City. In no case did Great Lakes ("Great Lakes") receive said bonds which Dean & Co., was to have purchased to post with the City with funds in the aforesaid amount released to Dean & Co., nor did it ever receive the cash equivalent of those municipal bonds.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By:

EXHIBIT 1 — Stipulations.

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R H Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in
Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 7

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that:

If Connors Haas, Inc., ("Connors Haas") were called upon to testify upon the trial of this action by an officer or employee of said company, said witness would testify that this company pursuant to construction contracts with the City of Rochester ("City") had over the period from August 22, 1970 to November 17, 1972, built up cash retainages in the aggregate amount of $20,360.00 and had elected to post municipal bonds in lieu of those cash retainages. Paul R. Dean & Company, Inc., ("Dean & Co.") was responsible for posting such municipal bonds with the City. In no case did Connors Haas, Inc., ("Connors Haas") receive said bonds which Dean & Co., was to have purchased to post with the City with funds released to Dean & Co., in the aforesaid amount, nor did it ever receive the cash equivalent of those municipal bonds.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

EXHIBIT 1 — Stipulations.

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R. H. Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGE3, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

STIPULATION NO. 8

- vs -

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that:

If DiFiore Construction Inc., ("Di Fiore") were called upon to testify upon the trial of this action by an officer or employee of said company, said witness would testify that this company pursuant to construction contracts with the City of Rochester ("City") had as of August 22, 1972, built up cash retainages in the aggregate amount of $9,200.00 and had elected to post municipal bonds in lieu of those cash retainages. Paul R. Dean & Company, Inc., ("Dean & Co.") was responsible for posting such municipal bonds with the City. In no case did Di Fiore ("Di Fiore") receive the bonds which Dean & Co., was to have purchased to post with the City with funds released to Dean & Co. in the aforesaid amount, nor did Di Fiore ever receive the cash equivalent of those municipal bonds.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

EXHIBIT 1 — Stipulations.

2

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R. H. Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 9

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that:

If Dwyer Electric Co. ("Dwyer") were called upon to testify upon the trial of this action by an officer or employee of said company, said witness would testify that this company pursuant to construction contracts with the City of Rochester ("City") had over the period from May 25, 1971 to October 4, 1971, built up cash retainages in the aggregate amount of $4,723.90 and had elected to post municipal bonds in lieu of those cash retainages. Paul R. Dean & Company, Inc., ("Dean & Co.") was responsible for posting such municipal bonds with the City. In no case did Dwyer ("Dwyer") receive said bonds which Dean & Co., was to have purchased to post with the City with funds in the aforesaid amount released to Dean & Co., nor did it ever receive the cash equivalent of those municipal bonds.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

EXHIBIT 1 — Stipulations.

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R. H. Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 10

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that:

If W. J. McEvily Plumbing & Heating Contractors, Inc., ("McEvily") were called upon to testify upon the trial of this action by an officer or employee of said company, said witness would testify that this company pursuant to construction contracts with the City of Rochester ("City") had over the period from October 25, 1972 to January 11, 1973, built up cash retainages in the aggregate amount of $43,212.50 and had elected to post municipal bonds in lieu of those cash retainages. Paul R. Dean & Company, Inc., ("Dean & Co.") was responsible for posting such municipal bonds with the City of Rochester. In no case did McEvily ("McEvily") receive said bonds which Dean & Co., was to have purchased to post with the City with funds in the aforesaid amount released to Dean & Co., nor did it ever receive the cash equivalent of those municipal bonds.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By:

EXHIBIT 1 — Stipulations.

2

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R. H. Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 11

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, Inc., that if William J. Schmitt, Inc., ("Schmitt") were to testify at the trial of this action by an officer or an employee of that company the testimony would be that Schmitt ("Schmitt"), pursuant to a building construction contract with the Penfield Central School District ("Penfield") had built up cash retainages in the amount of $10,516.00. Schmitt elected to post municipal bonds with Penfield ("Penfield") in lieu of said cash retainages and Paul R. Dean and Co., Inc., ("Dean & Co.") was responsible for posting said bonds with Penfield ("Penfield"). Schmitt never received the bonds which Dean & Company was to have purchased with funds released to Dean & Company in the aforesaid amount, nor did Schmitt ever receive the cash equivalent of those municipal bonds.

EXHIBIT 1 — Stipulations.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: _____

EXHIBIT 1 — Stipulations.

RJP:dmw 7/2/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff,

CIVIL ACTION # 74-127

STIPULATION NO. 12

- vs -

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that if Bacher Electric Company, Inc., ("Bacher") were to testify at the trial of this action by an officer or employee of that company the testimony would be that said company pursuant to a building construction contract with the Penfield Central School District had built up cash retainages in the amount of $16,055.50. Said company elected to post municipal bonds with the Penfield Central School District in lieu of said cash retainages and utilized the services of Paul R. Dean and Co., Inc. for this purpose. Said company never received payment from either the Paul R. Dean and Co., Inc., or the Penfield School District in this amount, nor did it ever receive the municipal securities in question.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

WINCHELL, CONNNORS & CORCORAN
Attorneys for Defendant
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45 Exchange Street
Rochester, New York 14614

BY R H Connors

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 13

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that if W. J. McEvily Plumbing & Heating Contractors, Inc., ("McEvily") were to testify at the trial of this action by an officer or an employee of that company, the testimony would be that McEvily ("McEvily") pursuant to a building construction contract with the Penfield Central School District ("Penfield"), had built up cash retainages in the amount of $11,232.50. McEvily elected to post municipal bonds with the Penfield Central School District in lieu of cash retainages and utilized the services of Paul R. Dean & Co., Inc., for this purpose. McEvily ("McEvily") never received payment from either the Paul R. Dean and Co., Inc., or the Penfield School District in this amount, nor did it ever receive the municipal securities in question.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By

WINCHELL, CONNNORS & CORCORAN
Attorneys for Defendant
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45 Exchange Street
Rochester, New York 14614

BY _____

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

STIPULATION NO. 14

- vs -

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that if Robert Bacher ("Bacher") was called upon to testify upon the trial of this action his testimony would be that on three separate occasions he and his wife, based upon an understanding with Paul Dean, delivered funds to Dean & Co., for the purchase of municipal bonds on personal investments. The first transaction occurred July 20, 1971, and was for $5,048.61. The second transaction occurred on March 1, 1972, and was for $16,684.59. The third transaction took place on January 22, 1973, and was for $20,072.22. That they never actually received the municipal bonds these payments covered and never received the cash from Paul R. Dean Co., Inc., which they turned over to Paul R. Dean.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
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By:

WINCHELL, CONNNORS & CORCORAN
Attorneys for Defendant
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45 Exchange Street
Rochester, New York 14614

BY R H Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTEPN DISTRICT OF NEW YORK

JOSLPH S. CARGES, as Trustee in
Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 15

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that if the Penfield Central School District were to testify upon the trial of this action by an officer or employee, the testimony would be that the School District engaged Bacher Electric Company, W. J. McEvily Heating & Plumbing Contractors, Inc., and W. J. Schmitt, Inc., to perform certain work in the nature of building construction for the Penfield Central School District. Pursuant to contract, Penfield Central School District was entitled to retain a certain percentage of the amount of each contract until such time as the building construction was completed and finally approved. That pursuant to the General Municipal Law, Section 106 said Contractors were entitled to substitute municipal securities for the aforementioned cash retainages. Upon notification from the Paul R. Dean and Co., Inc., that municipal securities had been purchased for the aforementioned contractors, the Penfield Central School District released the following sums to the Paul R. Dean & Co., Inc.:

$10,515.00 (William J. Schmitt, Inc.)

$ 4,655.50 (Bacher Electric Co.)

$11,400.00 (Bacher Electric Co.)

$ 7,407.50 (William J. McEvily Co.)

$ 1,900.00 (William J. McEvily Co.)

$ 1,925.00 (William J. McEvily Co.)

That the total amount of funds so released by the Penfield Central School District was $37,804.00. That the Penfield Central School District did not receive physical possession of any of the municipal securities that were posted as aforesaid. Nor did Penfield Central School District receive any funds from the Paul R. Dean Co., representing said municipal securities.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: R.T. Connors

EXHIBIT 1 — Stipulations.

RJP:dmw 7/3/75

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 16

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that if Charles W. Pritchard, controller of the City of Rochester from January 1, 1973, to February 15, 1973, were called upon to testify upon the trial of this action, he would testify that in April, 1973, he instructed Bernard F. Lillis, Jr., assistant controller of the City of Rochester, to investigate the Paul R. Dean and Co., Inc., with respect to the municipal securities reportedly being held by the Paul R. Dean Co., for the City of Rochester. That the City of Rochester never had physical custody of any municipal bonds reportedly purchased by the Paul R. Dean Co., on behalf of contractors doing business with the City of Rochester. That the City of Rochester did not receive the cash equivalent of the municipal securities that Paul R. Dean and Co., Inc., was reportedly holding for various contractors having building construction contracts with the City of Rochester.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, New York 14614

By: _____

WINCHELL, CONNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

By: _____

EXHIBIT 1 — Stipulations.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,

Plaintiff, CIVIL ACTION # 74-127

- vs - STIPULATION NO. 17

AETNA CASUALTY & SURETY COMPANY,

Defendant.

It is hereby stipulated by and between the attorneys for the plaintiff, Joseph S. Carges, as Trustee in Bankruptcy of Paul R. Dean & Co., Inc., and the attorneys for the defendant Aetna Casualty & Surety Company, that if upon trial of this action Bernard F. Lillis, Jr., assistant controller of the City of Rochester from January 2, 1973 through September 6, 1973, and assistant to the City Manager of the City of Rochester from September 6, 1973 to January 2, 1974, were called upon to testify at the trial of this action, his testimony would be that he was responsible for maintaining the records of the City of Rochester, transactions involving securities posted by the Paul R. Dean and Co., Inc., in lieu of cash retainages. That he personally compiled the documents contained in a folder entitled "Investigation of Paul R. Dean and Company" which folder contains business records of the City of Rochester and which were recorded in the criminal trial of Paul R. Dean on May 24, 1974 in the Monroe County Court. That the business records as aforesaid reflect the procedure of the City of Rochester in those cases in which the Paul R. Dean and Co., Inc., was reportedly holding municipal securities for the City of Rochester, which securities were being held in lieu of cash retainages having been built up by the following contractors

performing building construction work for the City of Rochester: Great Lakes-Dunbar-Rochester, Connors Haas Electric Co., DiFiore Construction Co., Dwyer Electric Co., McEvily Plumbing and Heating Contractors, Inc. In each case funds were released to the Paul R. Dean Co., by the City of Rochester based upon the assurance that said Paul R. Dean Co., was holding said municipal securities. That the records contained in the aforementioned folder demonstrate that as of April 4, 1973, the Paul R. Dean Co., was reportedly holding securities in lieu of cash retainages in the amount of $2,126,425.00 representing cash retainages of Great Lakes-Dunbar-Rochester, $20,360.00 representing cash retainages of Connors Haas Electric; $9,200.00 representing cash retainages of Di Fiore Construction Co.,; $4,723.90 representing cash retainages of Dwyer Electric Co.,; $43,212.50 representing cash retainages of McEvily Plumbing and Heating Contractors, Inc. The City of Rochester never had physical custody of the municipal bonds reportedly being held by the Paul R. Dean Co., and never received from the Paul R. Dean Co., the cash equivalent of said municipal bonds. That based upon his investigation of the records of the Paul R. Dean and Co., Inc., conducted a week to ten days after April 6, 1973, he ~~determined~~ could find no evidence that the municipal bonds reportedly being held by the Paul R. Dean Co., in lieu of the aforementioned cash retainages were in fact ~~never~~ purchased by the Paul R. Dean Co., ~~and~~ were ~~not~~ being held by the Paul R. Dean Co.

MARTIN, DUTCHER, MOUSAW,
VIGDOR & REEVES
Attorney for Plaintiff
Office and P. O. Address
25 East Main Street
Rochester, ~~New York 14614~~

By: _____

EXHIBIT 1 — Stipulations.

WINCHELL, CONNNORS & CORCORAN
Attorneys for Defendant
Office and P. O. Address
45 Exchange Street
Rochester, New York 14614

BY /s/ Connors

EXCERPTS OF TRIAL TRANSCRIPT.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,	)	
Plaintiff,	)	CIVIL ACTION NO. 74-127
-vs-	)	
AETNA CASUALTY & SURETY COMPANY,	)	
Defendant.	)	

Transcript of proceedings had and testimony taken in the above-entitled matter, before the HON. HAROLD P. BURKE, United States District Judge, in the United States District Court, Rochester, New York, on Monday, July 7, 1975.

APPEARANCES:

MESSRS. MARTIN, DUTCHER, MOUSAW, VIGDOR & REEVES
(By Justin L. Vigdor, Esq., Robert Pearl, Esq., and Bruce Lawrence, Esq.)
25 East Main Street
Rochester, New York 14614

Appearing on behalf of the Plaintiff.

MESSRS. WINCHELL, CONNORS & CORCORAN
(By Richard H. Connors, Esq.)
45 Exchange Street
Rochester, New York 14614

Appearing on behalf of the Defendant.

* * * * *

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Excerpts of Trial Transcript.
Stanley M. Dye for Plaintiff, Cross by Mr. Connors.

MR. VIGDOR: I have no further questions of Mr. Dye.

CROSS EXAMINATION

BY MR. CONNORS:

Q Mr. Dye, you said some time in April of 1973 you were hired by Mr. Vigdor to investigate the records of the Paul Dean Company?

A Yes, I was.

Q And you went to the Paul Dean Company office and determined that they did have certain books and records that you looked at and spent ten days to two weeks going over it, is that correct?

A Yes.

Q In the course of your investigation, you determined that customers had delivered checks to the Paul Dean Company, am I correct?

A That is correct.

Q That the City of Rochester, over a period of time, had forwarded checks to the Dean Company to pay for certain municipal bonds, is that true?

A That is correct.

Q And you had a list here of some other people who sent checks payable to the Paul Dean Company?

BEST COPY AVAILABLE

A True.

Q Is it a fact that in your examination of the records of the Paul Dean Company that all of these checks that were issued by the City of Rochester and by others, all showed as having been received by the Dean Company and were there to be discovered in the company books?

A In the case of the City, we verified that in detail. In the case of the others, we spot-checked a few.

Q So that all of this money, then, was in the possession, at some point, of the Paul Dean Company?

A That is correct.

Q Their books so indicated that it was in their possession?

A That is right.

Q You also undertook to determine from those books that certain checks were written by the Paul Dean Company and delivered to Paul Dean personally, is that true?

A Yes.

Q And made payable to him or to "Cash"?

A And to others.

Q And to others?

A Yes.

Q In the normal course of running the business there, is that correct?

A Well, none of the things that went through his account had anything that did not relate specifically to business activity. This would either be his personal activity --

Q But they were issued out of the Paul Dean Company's account?

A And charged to him, correct.

Q And you made a list of all those checks that you were able to determine had been made payable to Dean or turned over to him in some manner?

A Yes.

Q And were you aware at the time you were doing this that Paul Dean and John Nichols were the sole stockholders and directors of the Paul Dean Company?

A Yes. I became aware of that as we looked into the records.

Q And did you make an effort during this period of ten days to determine whether or not any checks were issued by the Paul Dean Company to John Nichols?

A We did.

Q And did you find that checks were issued to John Nichols?

A Yes, they were.

Q Did you make a list of those?

A Yes, I believe we did.

Q Now the books of the company, then, did show out of these

checks that you have mentioned, that were issued by the Dean Company or to Nichols or to others, right?

A That is correct.

Q And those were available there for you or for anyone that would examine the records of the Dean Company to discover?

A Yes.

Q You spoke of finding some sort of a financial statement which was Exhibit 9, that this was something that you discovered amongst the records at the Dean Company?

A It was in their files, yes.

Q And this purports to be some sort of a statement as of May 31st, 1961, am I correct?

A 1969.

Q 1969?

A It was at the end of their fiscal year at that particular time.

Q Did that statement show at that time that there was a deficit?

A It did.

Q And you said it showed about $4,900 in loans to employees, and you didn't know who those were?

A That's right. I didn't check that.

Q Subsequently, then, there was another statement at some

* * * * *

Q That included the one of Nichols?

A Yes, that is true.

Q Did it appear to you, from your examination of the checks of this nature, of his personal checks, and examination of the reports of the company, that he operated the business without much regard to the corporate checkbook as opposed to the personal checkbook?

A No, I wouldn't say that. I think the corporate books were maintained in a normal, orderly fashion. They were essentially a good set of corporate books.

Q And they were there on the premises?

A That's correct.

Q And available for your inspection?

A True.

Q And showed what you have told us they showed here, that the money was received from all of these customers and went into the Paul Dean & Company account?

A That is correct.

MR. CONNORS: Okay. Thanks. That is all.

MR. VIGDOR: I have no further questions.

(Witness excused.)

* * * * *

A Yes.

Q Was that on the Paul Dean Company account that that check was drawn?

A That was the company account that it was drawn on.

Q Do you recall who signed that check?

A I'm afraid I don't.

MR. CONNORS: Thank you. I have no further questions.

(Witness excused.)

JOHN L. NICHOLS,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VIGDOR:

Q Mr. Nichols, will you tell me where you live, please?

A 81 Knolwood Crescent.

Q And that is in Pittsford, New York?

A Yes.

Q From 1966 to the present time, have you always lived in Pittsford, New York, or in Rochester?

A Or in Rochester, yes.

Q What is your professional training, Mr. Nichols?

A I have an LL.D.

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Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Direct by Mr. Vigdor.

Q And did you for a time practice law in the City of Rochester?

A Yes.

Q Did you at a certain time become a private investor?

A Yes, I did.

Q When was that?

A Approximately, 1958.

Q When did you first become acquainted with Mr. Paul Dean?

A I would guess about 1960.

Q And did there come a time when Mr. Dean discussed with you the formation of a new company to be known as Paul R. Dean & Company, Inc.?

A Yes.

Q And to engage in the sale of municipal bonds?

A Yes.

Q And with what purpose did he consult with you and in what capacity--

A As an initial investor, an initial infusion of capital in the company, to attempt to secure some lines of credit for the company.

Q When was that?

A That would have been the summer of 1966.

Q Was there any other party involved initially?

A Yes.

Q Who was that?

A Morton Smookler.

Q And Mr. Smookler resided in Syracuse, did he not?

A Syracuse, New York.

Q He did then and he does now, is that right?

A To the best of my knowledge, he does, yes.

Q Did you in the summer of '66 cause a corporation to be formed?

A Yes.

Q And was an attorney retained by the new corporation for that purpose?

A Yes, there was.

Q Who was that attorney?

A Donald Houghton.

Q And did Mr. Houghton cause a corporate certificate to be filed in the State of New York, Department of State Office?

A Yes.

MR. VIGDOR: Would you mark this for identification?

(Plaintiff's Exhibit 16 marked for identification.)

Q I show you what has been marked Plaintiff's Exhibit 16 for identification and ask if that is the Minute Book, which was begun when the corporation was formed?

A I believe so, yes.

Q Does the first page of that contain a filing receipt showing the date of organization and filing with the Secretary of State?

A Yes, it does.

Q What is that date?

A August 25th, 1966.

Q There then follows a certificate, a copy of a certificate of incorporation, and I ask if that was a copy of the certificate that was filed with the Secretary for the Paul R. Dean & Company, Inc.?

A I believe so, yes.

Q At the time that this corporation was formed, who were the original officers?

A Paul Dean, President; John Nichols, Vice President; Donald Houghton, Secretary; Morton Smookler, Treasurer.

Q And who were the original shareholders?

A Paul Dean, myself and Morton Smookler.

Q Did each of you invest dollars in this enterprise?

A To the best of my recollection, Mr. Smookler and I did. I don't recall Mr. Dean investing any money.

Q How much money did you invest?

A Forty thousand dollars.

Q How much did Mr. Smookler invest?

A Forty thousand dollars.

Q You don't recall any investment by Mr. Dean?

A I don't recall any, no.

Q Now did the corporation issue stock to the three of you?

A Yes, they did.

Q Do you recall what shares each of you owned?

A I recall the percentages, which was thirty per cent for Mr. Smookler, thirty per cent for myself and forty per cent for Mr. Dean.

Q And did the corporation engage Mr. Dean as an employee at that time?

A Yes.

THE COURT: And he was then President of the company?

A That's right, Your Honor.

Q Now I invite your attention to --

MR. CONNORS: You are taking it out of Plaintiff's Exhibit 16.

MR. VIGDOR: All right. Make it Exhibit 16-A, and while you are doing it, mark this one 16-B, too.

(Plaintiff's Exhibits 16-A and 16-B marked for identification.)

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Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Direct by Mr. Vigdor.

Q Mr. Nichols, at the time that the company was organized, the corporation employed Mr. Dean pursuant to a written Employment Agreement, did it not?

A Yes, it did.

Q And the written Employment Agreement has now been marked Exhibit 16-A for identification, and which was in the Minute Book, Plaintiff's Exhibit 16 for identification?

A Yes.

Q And who signed on behalf of the company?

A John Nichols and Paul Dean.

Q Who signed for the company?

A I did.

Q And Mr. Dean signed as the individual employee?

A Yes.

Q This employment provided, did it not, that he would be employed as General Manager of the corporation?

A Yes.

Q And it then proceeded to describe his duties, did it not?

A Yes.

Q What did it provide about the term of the agreement?

A It was a three-year contract.

Q And thereafter?

A Renewable year by year.

Q And did you at the same time sign a Shareholder's Agreement among the three shareholders?

A Yes, we did.

Q And is that what we have marked Exhibit B for identification?

A Yes.

THE COURT: That is Exhibit 16-B.

MR. VIGDOR: I'm sorry, Your Honor. Yes, Plaintiff's Exhibit 16-B.

THE WITNESS: Yes.

Q Was that Shareholder's Agreement signed by all three of you?

A Yes, it was.

Q And by the corporation?

A Yes.

Q And the minutes in this Minute Book, Exhibit 16, were prepared by Mr. Houghton as your corporate attorney?

A I believe so.

Q And the minutes of the corporation in this book continue until what date?

A They appear to continue to the 1st day of February, 1969.

Q What, if anything, occurred in February of 1969 with regard to the corporate affairs?

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Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Direct by Mr. Vigdor.

A At that time Mr. Smookler, for business reasons, he needed the money that he had invested in the Dean Company back. He was expanding his own business in Syracuse, and Mr. Dean, or the corporation, agreed to buy the stock back from Mr. Smookler.

Q And was that, in effect, consummated?

A Yes, it was, to my knowledge.

Q And Mr. Smookler resigned from the affairs of the corporation in February of 1969?

A Yes, he did.

Q What was the ownership of the shares of stock in the corporation from that date forward?

A At that time Mr. Dean owed me a sum of money; in lieu of payment of that money to me, he gave me five shares of his stock or five per cent of his stock, which at that time made us equal owners. We each had thirty-five per cent of the corporation stock. Thirty per cent was treasury stock or had been retired.

Q So then you owned thirty-five shares, and he owned thirty-five shares of the total of seventy shares outstanding from that point forward?

A That's right.

Q And you were fifty-fifty owners?

A That's right.

Q And Mr. Smookler resigned?

A Yes.

Q And you were Vice President and Dean was President?

A Yes.

Q And the company's activities in the field of municipal bonds was progressing, was it not?

A Despite what I have heard today and found out subsequent to the demise of the company, I thought the company was progressing quite handsomely.

Q In addition to the Rochester office, were other offices opened?

A Yes. An office was opened in New York City.

Q Where was that?

A I can't give you the address. It was in the Wall Street area.

Q Would 40 Wall Street be right, do you think?

A They had an old office, and I never saw the new office, but it was in the Wall Street area, and they opened an office -- and I can't give you the date -- in Atlanta, which was quite a sizable office. It was larger than the other two combined.

Q Will you describe what function you played in the affairs

of the company on a day-to-day basis from 1969 to April of 1973?

A I have to say none, with the exception of loaning money into the corporation, or securing money for the corporation.

Q You are talking of securing money for the corporation. Will you tell the Court what you mean by that?

A Yes. On three different occasions, as the company expanded and there was a need for additional capital, I would go out and attempt to raise the capital. I don't know if you want me to get into the details of it.

Q In summary form, how much capital did you raise, and from whom did you raise it and when did you raise it?

A On my own, through the life of the corporation, I contributed not at one time but at various times amounts totaling approximately four hundred thousand dollars. I raised an additional four hundred and five thousand dollars from members of my family, or my wife's family, actually.

Q Were formal meetings of the Board of Directors held at any time subsequent to the last minutes in the Minute Book?

A Not to my knowledge, sir.

Q Did you ever receive a financial statement on the operations of the Dean Company?

A I received a monthly statement the first year or two of

the corporation. The last financial statement that I have been able to find is a 1969 statement.

Q I show you what has been marked Exhibit 9 in evidence and ask if that is the statement that you are referring to?

A Yes, I believe it is.

Q I show you what has been marked as Exhibit 10 in evidence, which purports to be a statement, an unaudited statement, of February 29, 1972, and ask if you ever saw that before?

A No.

Q Did you, during this period of time, have other business interests?

A Yes, before and after the Dean Company.

Q And during the entire period of 1969 when Smookler left until April of '73, did you have other business interests?

A Yes.

Q And did there come a time in March of 1973 when you met in the offices of the company with Mrs. Poluch?

A Yes.

Q And did you at that time have a conversation regarding the affairs of the company, and in particular, regarding the existence or non-existence of certain so-called City bonds and contractor bonds?

A Yes.

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Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Direct by Mr. Vigdor.

Q Can you tell us in words or in substance what she told you and what you said to her at that time?

A I don't recall if it was Kathy -- the three Rochester people were in the office, Mr. O'Brien, Mrs. Bemis and Mrs. Poluch. And I had been in New York during that week and had arrived in Rochester Thursday night, Friday morning, and I believe it was in the newspapers or something happened that Mr. Dean had assigned some stock or something to Lincoln Rochester. I went into the office and found this out. They were very upset in the office, and I asked what was going on, and they said they don't know what is going on. "Everything is in a tailspin." Then I said, "What is the problem here?"

They said, "There are no City of Rochester bonds," at which point I said, "You all sit right here in your seats," and I called an attorney in New York City. That was March 30th, about eleven o'clock in the morning.

Q On a Friday?

A That was on a Friday.

Q That attorney was Mr. Kassin, your personal attorney?

A Yes, that's right.

Q Was it over that week end, between the 30th and the 4th of April, that Mr. Keigher was engaged by Mr. Kassin

locally?

A Yes, I believe so.

Q And was the Assignment for the Benefit of Creditors of the company made to me on the 4th of April, 1973?

A That is my recollection.

Q Mr. Nichols, are you familiar with the municipal bonds business? Do you know anything about it?

A No, I do not.

Q Have you ever traded in municipal bonds?

A Never.

Q Have you ever been a licensed stock broker?

A No, sir.

Q Did you ever approve or know of the fact that these monies were received from the City of Rochester and other contractors and deposited in the company's account and that the bonds that they were supposed to have represented were never purchased?

A Absolutely not.

Q Mr. Dye has testified to the preparation of a certain schedule showing the growth in Mr. Dean's account, which has been marked Exhibit 8 in evidence, which schedule showed a balance debt from him to the company of June 1st, '71, of $45,000 and a gradual increase in that debt to

April 3rd, 1973, of $557,000, and I show you that Exhibit (indicating). Now did you know or approve of the transfer circled on this account representing corporate funds into Mr. Dean's Chemical account of $33,000 on May 18, 1972?

A No, sir.

Q Did you know or approve of the transfer circled on August 17th, 1972, of $45,000?

A Not to my knowledge, no, sir.

Q Did you know or approve of the circled transfer on December 5th, 1972, of $60,000?

A No, sir.

Q Did you know or approve of the circled transfer on January 2nd, 1973, of $75,000?

A No, sir.

Q Did you know or approve of the circled transfer on January 24th, 1973, of $10,000?

A No.

Q Now I invite your attention on the same schedule to various transactions in Syntex stock; one hundred shares on July 6, 1972, for $8,690. Did you know of or approve of him purchasing that stock with the company money in his own name?

A No, sir.

Q Did you know or approve of the transactions on July 31st,

1972, of Syntex, in the sums of $26,045, $85,175 and $340,094?

A I did not.

Q How about the transactions on August 3rd, 1972, of Syntex in the sums of $435,145?

A No.

Q $137,568?

A No.

Q How about the transaction on August 7th, 1972, of Syntex, $17,562?

A No.

Q The transaction on August 7th of $741,194?

A No, sir.

Q How about the transaction shown on this schedule of Graphic Science stock? Did you know of any advances by the corporation to him so that he could personally purchase Graphic Science stock?

A I didn't. I don't see it there, but --

Q Do you see a credit here for the proceeds received less the proceeds disbursed?

A No. I didn't know. I wasn't aware of it, no.

Q There is a charge against his account of certain transactions in Florida land sales that he took in his own name. Did

you know of that transaction?

A No, I didn't.

Q Did you ever approve of that transaction with the company funds?

A No.

Q I show you Exhibit 12 in evidence and invite your attention to the last column showing cash disbursements of cashed checks which were cashed by Mr. Dean rather than deposited and which total $36,850 and ask if you knew of or approved any of those transactions?

A I did not know of them.

Q There has been some questioning by Mr. Connors of Sande Broadcasting and about loans by the corporation to Mr. Dean and to you and to Mr. Sayre with regard to Sande Broadcasting. Did you know of and approve of the corporate loans to yourself and to Mr. Dean and to Mr. Sayre regarding Sande Broadcasting?

A Certainly, yes.

Q Will you tell the Court what that transaction was, please?

A It was for the purchase of stock, or the purchase of station WHEC radio from the Gannett Corporation. Mr. Dean had suggested to me, and I had negotiated the sale with Mr. Miller of Gannett, and when Mr. Dean heard about

it, he suggested to me that rather than put my money up, he would like to become part of that corporation, that the Dean Company was financially well and able enough to loan us the money.

MR. CONNORS: I object to all this talk with Mr. Dean. I object to his conversation with Mr. Dean.

THE COURT: Objection overruled.

MR. CONNORS: Exception.

THE WITNESS: At any rate, there were four initial stockholders, Mr. Dean, myself, Mr. Paris and Mr. Sayre, who is the radio man of the group. And Mr. Sayre was unable at the eleventh hour to come up with the balance of his contribution to purchase stock, and the Dean Company, with my knowledge, loaned him $40,000 to complete his part of the transaction. The Dean Company also loaned Mr. Dean and myself, I believe, $125,000 apiece to purchase our shares in the radio station.

Q And that transaction was with your knowledge and your consent?

A Oh, yes.

Q I show you what has been marked Exhibit 13 in evidence, which Mrs. Poluch has testified is a schedule that was prepared in order to enable her to write interest checks to contractors as though the bonds had existed and the coupons had been clipped. And I ask whether you knew of the existence of such a record at the Dean Company?

A No, but I didn't know of the existence of this. I really didn't know where most of the records were kept there. I did not know specifically of the existence of this.

Q Did you ever ratify or approve the payment of interest by the Dean Company out of the Dean Company's operating account on non-existent bonds?

A No.

Q I show you what has been marked Exhibit 15 in evidence, which is a list of the claims filed in the Dean Company bankruptcy proceeding, and I invite your attention to entries for a Bertha Lawless and a Vincent Lawless, and will you tell the Court what those claims represent?

A I believe the claims represent monies or bonds deposited with the Dean Company as collateral plus accrued interest, I assume from the amounts. These were parts of, in one case, and a total amount, in another case, of bonds and/or

cash that they had deposited with the Dean Company in order to expand the Dean Company's collateral position to allow them to borrow money, and at least this is as I had understood it.

Q Mr. Nichols, the Lawlesses are relations of yours, are they not?

A Yes, they are. I have personally guaranteed these amounts of money to the people.

Q You are still an obligor to them on the guaranty of these amounts, is that correct?

A I am still "on the hook," Mr. Vigdor, yes.

Q These monies were obtained from the Lawlesses, and these bonds were obtained from the Lawlesses to enhance the capital position of the Dean Company, is that not correct?

A Yes.

Q And did you make the arrangements to obtain that from your family?

A Yes, definitely.

Q With the Lawlesses?

A With the Lawlesses, yes.

Q Did you know that Mr. Dean took their bonds and then proceeded to sell out those bonds?

A I certainly did not.

MR. CONNORS: I object.

THE COURT: Objection is overruled.

Q Were those bonds present when the company went under?

A They were not.

Q Did you ever ratify or confirm his selling out of your family's bonds?

A Absolutely not.

Q Did there come a time as late as February or January of 1973 when you personally invested more money in the Dean Company?

A Yes. I believe it was February of '73.

Q And was that money invested by you with knowledge of the state of Mr. Dean's personal account?

A First of all, it wasn't an investment. It was a loan of which I had made a continuing series through the life of the corporation, but in no way if I thought the corporation was in any kind of financial difficulties would I have at that time loaned additional money in it.

Q Did you personally ever reconcile any of the Dean Company's corporate checking accounts?

A No, sir.

Q Did you ever see any of the checks before this proceeding began representing advances to Mr. Dean or made on his

behalf shown on Exhibits 8 and 11 in evidence in this proceeding other than the checks which I am now showing you, to your recollection?

A I'm afraid I have lost the train of thought.

(Last question read.)

MR. CONNORS: I object to that. I don't understand it.

MR. VIGDOR: I am not sure I do either. I will withdraw the question. That is a pretty terrible question. I withdraw it.

Q I show you Exhibit 8 marked in evidence representing checks drawn to Mr. Dean for his account and ask if you recall whether you signed any of those checks representing those transfers, other than the three checks that I lay before you --

THE COURT: You've got the checks, haven't you? If it is important, let him look at the checks in front of him.

MR. VIGDOR: Your Honor, I have got the checks in front of him.

THE WITNESS: I have seen these checks. I recall no others.

THE COURT: Let him look at the others.

(Checks handed to the witness.)

(Last question read.)

THE WITNESS: No, sir.

Q You have testified, Mr. Nichols, about the meeting that you had on or about March 30th, 1973, with Mrs. Poluch in the office of the company. Did there come a time thereafter when you saw Mr. Dean?

A Yes, there did.

Q When did you next see Mr. Dean?

A Within an hour of that meeting.

Q And how was that meeting with Mr. Dean arranged?

A I called him and said I wanted to see him immediately.

Q And did you, in fact, meet with him?

A Yes. He refused to come in the office and stated that he would meet me at the Eggleston Restaurant.

Q Did you meet him there?

A Very briefly.

Q And what was said by you to him and by him to you, in words or substance, at that time?

A What was said to me was --

MR. CONNORS: I object, Your Honor.

THE COURT: Objection is overruled.

THE WITNESS: It was fairly emotional, you know, "What the hell is going on here? Where are these bonds?"

His comments were very brief. He said, "Don't be mad at me for anything you hear," and he had to leave. He was going, I believe, to the Nixon, Hargrave office, over to Lincoln Rochester Trust. It was a three-minute meeting or two minutes, something like that. He did, however, show up.

MR. VIGDOR: I have no further questions.

Your witness.

CROSS EXAMINATION

BY MR. CONNORS:

Q Mr. Nichols, as of 1969, as I understand it, you and Mr. Dean were the sole stockholders in the Paul Dean Company?

A Yes.

Q And you were the only two directors of the company?

A Yes.

Q And as I understand it, you have testified previously concerning this before the Grand Jury?

A Yes.

Q And, incidentally, you testified there, did you not, under a grant of immunity from prosecution, so far as you were concerned, is that right?

A Yes.

Q And I believe you testified then, did you not, and is it a fact that as far as you were concerned, you were --

THE COURT: I presume you've got a transcript of the Grand Jury testimony?

MR. CONNORS: Yes.

THE COURT: He is entitled to be confronted with it, if you have it.

MR. CONNORS: I will withdraw it in that form.

Q Is it true, Mr. Nichols, that as far as you are concerned, you, at the present time and over the past three or four years, have been unemployed?

A No, sir.

Q Well, have you testified that --

A I do not have a job. I do not receive a salary or a paycheck.

Q You consider yourself an investor, is that correct?

A Yes.

Q And you were an investor in the Paul Dean Company, among others?

A Yes, that's right.

Q And during the existence of the Paul Dean Company, and I speak now, if I may, after Mr. Smookler resigned, and you and Mr. Dean were the only stockholders and directors, from that point on, you left the running of the business up to Mr. Dean?

A I did prior to that, yes.

Q You knew nothing about the bond business or anything about that business operation?

A That's correct.

Q And you, as far as you were concerned, you left the running of the business and the operation of it, up to Mr. Dean and what he did was okay with you, as far as the business is concerned, is that correct?

A Yes.

Q And anything that Dean did in the conduct of the business you made no effort to become aware of it and had no desire to become aware of the operation of the business?

A That was my position, yes.

Q You did, however, did you not, have access to the Dean & Company office and to their books and records?

A Yes.

Q Did you deliberately avoid obtaining any knowledge of what was contained in those books and records?

A No, sir.

Q Did you ever make any efforts to determine what was contained in those books and records?

A No, sir.

Q Did you ever look at them?

A No, sir.

Q So that as far as that was concerned, you left that up to Dean, the running of the business?

A Yes.

Q And what he did as far as you were concerned was okay with you?

A Yes.

Q And I believe you said at one time, or I will ask you now, as far as you were concerned, Paul Dean was the Dean Company and he ran it?

A He was a stockbroker, or the bondbroker -- I wasn't.

Q And you as a director took no part in it?

A No, sir, aside from raising money for the corporation, which is the sizable part, actually, or was, of that company.

Q Aside from also, from time to time, borrowing money from the company, is that right?

A Not from time to time, Mr. Connors. I think you are a little --

Q How often did you?

A With Mr. Dye here, I would say that I borrowed money from the company once.

Q And that was at the time of this Sande matter?

A That's correct.

Q During the time that Mr. Dean was running the company, did you know that he was paying himself a salary?

A No. That has been asked of me before. I assumed he was taking a salary. I did not know the amount.

Q Did you know the amount? That is what I was just going to ask you.

A I did not.

Q Did you make any inquiry as to what it was?

A No, I didn't.

Q Did you really care how much he drew?

A No, I didn't. The better he lived, the better I assumed we were doing.

Q During these years that you are speaking of, did you become aware of the fact that Mr. Dean spent money, in one

instance, for a Maserati automobile that he purchased with the company funds?

A I did not at the time know that that was purchased with company funds. I did not know until several weeks subsequent to his purchasing the automobile that he had purchased it.

Q You knew he had one?

A Yes, I did know he had one.

Q As far as you were concerned, it was all right with you if he had it?

A Yes.

Q And that he had a yacht?

A A motorboat.

Q It was a yacht, wasn't it?

A Well, I see a yacht as a cabin cruiser or something like this. This had no cab or something like this. It was a motorboat.

Q Did you know that he had a drawing account with the Paul Dean Company, and as far as you were concerned, it was all right if he used it?

A I assumed that he, and other salesmen, had drawing accounts, because I assumed he did, because I assumed the salesmen did.

Q Did you know that he engaged in purchases of common stocks using the funds of the Paul Dean Company?

A That I did not know.

Q Didn't you know that he traded in stocks?

A I thought he traded in stocks in the company name.

Q And that was okay with you?

A That was perfectly all right.

Q And did you know that he bought this Syntex stock that we are speaking of?

A No.

Q You didn't know that?

A I didn't know specifically. Once and awhile if he had a very successful trade, I would hear about it.

Q Did you know that he invested money in other companies?

A I knew of the Halco investment.

Q And the Sande investment?

A Certainly.

Q Did you know that from time to time Dean borrowed money from the Paul Dean Company?

A No, I didn't.

Q You knew when he borrowed money to go into the Sande deal, didn't you?

A Yes.

Q You knew when he went into this other deal that he borrowed

money from the company, didn't you?

A The Halco deal, I thought, Mr. Connors, was a corporate purchase. I didn't realize it was in his own name.

Q Whatever activities he conducted as far as the Paul Dean Company was concerned, you left up to him, and as far as you were concerned, it was with your approval?

A Yes.

Q And you took no part in it?

A No active part in the company.

Q You were, were you not, consulted by Mr. Dean about management decisions and what should be done in the operation of the company?

A No, not about the management decisions. They were completely his. I had no knowledge --

MR. CONNORS: Just a minute. I will get it for you.

(Pause in the proceedings.)

THE COURT: You certainly are not going to be able to finish this tonight?

MR. CONNORS: No, sir.

THE COURT: All right. We will adjourn until tomorrow morning at ten o'clock.

(At 4:40 P.M., an adjournment was taken to Tuesday, July 8, 1975.)

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Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Cross by Mr. Connors.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

JOSEPH S. CARGES, as Trustee in Bankruptcy of PAUL R. DEAN & COMPANY, INC.,	)	
Plaintiff,	)	
-vs-	)	CIVIL ACTION NO. 74-127
AETNA CASUALTY & SURETY COMPANY,	)	
Defendant.	)	

The trial in the above-entitled matter was resumed before the HON. HAROLD P. BURKE, United States District Judge, in the United States District Court, Rochester, New York, on Tuesday, July 8, 1975; and Wednesday, July 9, 1975.

APPEARANCES:

MESSRS. MARTIN, DUTCHER, MOUSAW, VIGDOR & REEVES
(By Justin L. Vigdor, Esq., Robert Pearl, Esq.,
and Bruce Lawrence, Esq.)
25 East Main Street
Rochester, New York 14614

Appearing on behalf of the Plaintiff.

MESSRS. WINCHELL, CONNORS & CORCORAN
(By Richard H. Connors, Esq.)
45 Exchange Street
Rochester, New York 14614

Appearing on behalf of the Defendant.

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Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Cross by Mr. Connors.

Rochester, New York

Tuesday, July 8, 1975

10:00 A.M.

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THE COURT: You may proceed.

J O H N L. N I C H O L S,

resumed as a witness, having previously been sworn.

CROSS EXAMINATION CONTINUED

BY MR. CONNORS:

Q Yesterday, Mr. Nichols, I think I was asking you whether Paul Dean consulted you in connection with decisions as to the operation of the company, and I believe you answered that all the decisions were his, and he was the one that was running the company?

A Basically, they were, as far as personal --

Q When you were consulted about what was going to be done as far as the company was concerned, after all was said, the decision as to what to do was Mr. Dean's, wasn't it?

A Basically, when I was consulted, primarily it was something that involved the expenditure or the obtaining of additional capital for expansion of the company.

Q You are the money raiser?

A I try to be.

Q At one time did you discuss with Mr. Dean the possibility or question to open another office in Atlanta?

A Yes.

Q You were opposed to that?

A Yes, I was.

Q But Dean opened an office in Atlanta anyway?

A Yes, but at my insistence, he closed it.

Q The fact that you objected to it, Dean still opened an office down there?

A That's correct.

Q As far as the running of the business was concerned, whatever he did, he did, and that was okay with you?

A As long as he complied with whatever regulations he was required to comply with, sir.

THE COURT: What regulations?

A I don't know, Your Honor, whatever laws governed or rules governed stock dealers and bond dealers and so on.

Q During the course of, let's say, from '69 to '72, during the course of that time, were there indications, to your knowledge, that the Dean Company loaned money to Paul Dean?

A Not specifically, no. I think I was aware that he drew monies against, I presume, a drawing account, but specific

amounts, no, sir.

Q The company loaned money to you, did it not?

A On one occasion.

Q And to Mr. Dean?

A Yes.

Q And as far as you were concerned, Dean had permission for the company to loan him money?

A If I was aware of it, yes.

Q Do you recall being asked about this on a previous occasion back in February of 1974 of an examination before trial in another matter in connection with the Dean Company?

A Yes.

Q You do recall being asked the question --

MR. VIGDOR: I object.

THE COURT: Not "does he recall it." I take it there is a transcript?

MR. CONNORS: That's correct.

THE COURT: Call his attention to what he said then.

Q I call your attention to Page 47 of this transcript and ask you if you were asked the question --

THE COURT: You don't have to ask him. You've got the transcript. That is

his testimony.

Q All right. Was your testimony:

"Question: Did he have your permission to make such loans to himself?

"Answer: He was running the company. My investment was in him. I didn't question what he did."

A Yes.

Q That is a fact, isn't it?

A Yes.

Q Now Miss Kathy Poluch, I believe, testified yesterday that during the last two or three years of the company's existence, that you came into the office more than two or three times a week?

A On a reguler basis, yes.

Q On occasion, four times a week, isn't that so?

A Probably, yes.

Q This was in the office in Rochester?

A Yes.

Q Present in that office were the company books and records, checkbooks?

A To the best of my knowledge, they were, yes.

Q From time to time, you wrote checks in those checkbooks?

A I signed checks, right.

Q And you signed checks on some occasions, at least, payable to Paul Dean?

A Probably, yes.

Q As a director of the company, did you get a salary for acting as director?

A No, sir.

Q Did you draw some kind of a salary?

A Yes. I draw a salary.

Q Do you recall how much it was?

A Approximately a thousand dollars a month over the life of the company.

Q You say "approximately." Did it vary?

A It would vary. The first year of the corporation I drew no salary.

Q Would the company write you a check for it?

A Yes.

Q Would you go in and ask for a check for some dollars, or was there some agreement?

A No. At certain times they would issue me a check, a salary check, and at other times --

THE COURT: At the rate of --

A -- at the rate of a thousand dollars a month in the second or third year of the corporation.

Q Did you get a thousand dollars every month?

A No, sir.

THE COURT: You said you were getting a salary of a thousand dollars a month, but you didn't get, I take it, a thousand dollars any particular day of any month?

A During the second and possibly the third year of the corporation's existence, I received a paycheck weekly, or bi-weekly.

THE COURT: That doesn't tell me anything, a paycheck. What I'm interested in is how much you got.

A I received a thousand dollars a month. My salary varied between twelve and seventeen thousand dollars.

THE COURT: You would know actually how much you got, wouldn't you?

A During later years in the corporation, rather than drawing a specific salary monthly or weekly, monies that I would withdraw from the company would be credited to my account with the company and charged to salary.

THE COURT: That means you got the salary?

A Oh, yes, sir.

Q I think your testimony yesterday was that from time to time you personally put money into the Paul Dean Company?

A That's correct.

Q And to the extent of -- and I have forgotten what you said.

A It is rough in my mind. I would say between three hundred and fifty and four hundred thousand dollars.

Q And this is money that you put into the Paul Dean Company?

A Personally.

Q Then you took out money?

A Yes.

Q You took out sometime in late '72 one hundred fifth thousand, or whatever, to go into the Sande Company?

THE COURT: Why should there be any vagaries about this money? We are talking about big money.

Q About how much money did you take out?

THE COURT: I don't want to know "about how much" he got. I want to know how much he got. If it is important, I certainly should know it and not have an approximation of these large figures.

Q How much money did you take out of the Dean Company to

invest in the Sande Broadcasting Company?

A I believe it was one hundred and twenty-five thousand.

Q You did? You believe that?

A Yes.

Q How much do you believe that Paul Dean took out to invest --

A The same amount.

Q How much was taken out of the company to loan to the Sande Broadcasting Company?

A Over a period of eighteen months, $81,500.

Q This $350,000 that you put into the company, you withdrew all of that, didn't you?

A I can't give you the exact year, but I would say up until the Sande loan, I had a credit balance with the Credit Corporation.

Q You have seen Exhibit D-1 for identification, which is the report that Mr. Dye prepared concerning the financial status of the Dean Company?

A I don't know whether I have seen this or not.

Q Take a look at it.

A I can't honestly answer whether I have seen this or not. I don't know.

Q Did you hear Mr. Dye's testimony yesterday?

A Yes.

Q You were here, weren't you, when he testified that when he made his report as of June 19, 1973, you owed the Dean Company $151,900?

A I heard that.

Q You disagree with that?

A That is incorrect.

Q How much do you feel you owe?

A That is still a bone of contention, but the amount of money that was resolved was a hundred twenty thousand dollars and change.

Q As far as the Trustee is concerned, they claim you owe them $151,900?

A No --

THE COURT: You say it was resolved. Who resolved it? That means somebody has agreed to it.

A I had some credits that the Trustee was not aware of at this point.

THE COURT: I understand that, but you said it was resolved?

A The credits that the Trustee became aware of reduced the $151,000 amount to $120,000.

THE COURT: You mean the Trustee

agreed with it?

A Yes.

Q From time to time, Mr. Nichols, during the years from '69 on, did you or did you not receive financial reports from your accountants, or from the company's accountants?

A I don't recall receiving them, no. The last one that I found in my file was 1969.

Q You do know that financial reports were prepared, do you not?

A I only know for a fact that tax returns were filed.

Q Was there a yearly financial report prepared?

A In the early years of the corporation, there was. I don't recall them in later years.

Q Did you ever discuss the contents of any financial reports with Mr. Dean?

A No, sir.

Q I want to show you the same transcript I called your attention to before, February 25th, 1974, at Page 35, and were you asked the question:

"Question: And did you at any time ever discuss the contents of this yearly financial report with Mr. Paul Dean?"

And did you answer:

"Answer: Yes."

A I did, and I stand corrected.

Q What year?

A What year was that?

Q What year did you discuss financial reports with him?

A 1969, according to the testimony there.

THE COURT: The testimony? I haven't heard any testimony referred to --

MR. VIGDOR: What page?

THE COURT: That isn't the question. The question is, as it sets forth in the transcript, and he referred to the transcript. Does the transcript show that they were talking about 1969? If it does, point it out.

THE WITNESS: Yes, it does, Your Honor.

THE COURT: Where? You can read anything from that transcript that you want to.

THE WITNESS: The question was:

"Question: Was that for the calendar year 1969 or for a fiscal year

ending sometime in 1969?"

THE COURT: What was the answer?

THE WITNESS: (Reading):

"Answer: I don't know whether we were on a calendar or fiscal year, and that is why I was --"

And then there is something off the record.

Q Then the next question and answer. (Reading):

"Question: Was a financial report prepared each year?

"Answer: I believe so.

"Question: And did you at any time ever discuss the contents of this yearly financial report with Mr. Paul R. Dean?

"Answer: Yes."

Then were you asked the question:

"Question: Would you do that on a yearly basis?"

And did you answer:

"Answer: I would do it when I would receive a copy, if there was something that I questioned or --"

A Yes.

Q Is that right?

A Yes.

Q Then the question was:

"Question: Did you at any time ever question any of the business activities of Paul R. Dean?"

And was your answer:

"Answer: No, I didn't."

A That's right.

Q Did you ever at any time discuss with the accountants for the firm the financial condition of the Paul Dean Company?

A No. My discussions, to my recollection, with the accountants, were on what my loan balance was with the corporation, whether it was all right to charge a boat to the corporation. They didn't know at the time whether it would be a company boat, or Mr. Dean would have to own it personally.

Q Isn't it a fact that in January or February of 1973 that you had some discussions with the accountants, and the accountants told you that the company was in desperate need of capital?

A My discussion, to the best of my recollection, at that time with the accountant was two-fold. He said that the company could use an injection of capital, which he had told me from time to time in the past, and which I had

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responded to by raising capital for the corporation. The rest of it was that he wanted to sit down and straighten out the stock accounts in the company. I asked him what he meant, and he said in words to this effect, "The co-mingling of the stock accounts between the corporation and Paul."

Q So he made you aware that there was "co-mingling" of stock accounts between Paul's personal account and the company's account at that time?

A At that time, at that point, yes.

Q He made you aware at that time of actually the figure of at least a quarter of a million dollars of fresh capital, didn't he?

A That was the figure.

Q As a matter of fact, he told you, that unless you raised it, you weren't going to have them as accountants anymore? Isn't that so?

A I don't recall that, no, sir.

Q This was about the time, was it not, when the accountant was telling you about this need for all this fresh capital? Was that about the time that you and Mr. Dean took money from the Paul Dean Company and invested it in shares of stock in Sande Broadcasting Company?

A No, sir.

Q It was about a month before that?

A No.

Q When did you invest money in Sande Broadcasting Company?

A January 7th, 1972.

Q And this discussion was in February of '72, was it not?

A No, sir.

Q You are sure of that?

A Positive.

THE COURT: You are talking about accountants. I would like to know what accountants he is talking about.

Q Who did you have these discussions with, Mr. Nichols?

A Mr. Irwin Metzger.

Q Mr. Nichols, were you also aware that the Dean Company turned funds over to other companies besides the Sande Broadcasting Company?

A In only one instance that I am certain of, Mr. Connors.

Q What was that?

A The Halco Chemical Corporation, I believe was the name of it.

Q Incidentally, go back --

A Excuse me, but when you say "turned over monies," it was

my understanding that stock had been purchased in that corporation, not loans of the corporation.

Q Let's go back to the Sande Broadcasting Company for a minute. The money that you took from the Paul Dean Company, you said $125,000, you took and Mr. Dean took?

A Yes, sir.

Q And you were issued shares of stock for that money, were you not?

A That's correct.

Q And how many shares were issued to you?

A Four hundred shares at the time.

Q How many to Mr. Dean?

A The same amount.

Q Were those shares issued to you in your own name personally?

A That's correct.

Q Were any shares issued to the Paul Dean Company?

A No, sir.

Q And the same is true with Dean? The shares were issued to him personally?

A Yes, sir.

Q At any time when this money of the Dean Company was used to buy shares of stock for you and Dean, at any time did you ever report that or give notice to the Aetna Casualty &

Surety Company of this situation?

A No, sir. That was money out of the operating profit that I believed was all right to take.

Q You say "out of the operating profits"?

A That's right.

Q Had you seen any financial statements that showed an operating profit during the time that you were a director?

A Yes. I believe that the '69 statement showed a profit.

Q I show you Exhibit 9, which is in evidence. Is this the 1969 financial statement that you had reference to?

A Yes, I believe it is, and I believe it shows a loss.

Q Does that show that the net loss from operations from $55,964?

A Yes.

THE COURT: Is that 1969, ending December 31 --

THE WITNESS: May 31.

THE COURT: That is the fiscal year ending on May 31?

A Yes.

Q Now have you ever seen, or had you ever seen, at the time that you invested these monies in Sande Broadcasting Company, had you ever seen any financial statements of the

Paul Dean Company that showed operating profit of any kind?

A Yes. I recall having seen them prior to 1969 because I know I saw financial statements that showed a profit.

Q Let's say since 1969, then?

A 1969 is the last financial statement I recall having seen.

Q And this investment you made in Sande was in '72, I think you just told us?

A That's correct.

Q And you said you did that because the financial statement looked "rosy" and there was a profit?

A The Dean Company, particularly through its New York City office, operated annually in the millions and millions of dollars. I remember a specific occasion when seven million dollars' worth of bonds were traded in a single afternoon, showing a profit in excess of four hundred thousand dollars to the firm. There are several other such instances that I was aware of during the course of time, or would hear about -- not necessarily from Mr. Dean but from the bond traders or excitement in the office about that type of a day. It was my understanding and belief that the company was operating extremely profitably.

Q Did you ever look at a financial statement to determine whether your belief was true or not?

A Not after 1969, no, sir.

Q You made no efforts to determine whether there were financial statements or what they said?

A I believe I asked once or twice where they were, and I would see the tax return, possibly.

Q Incidentally, since 1967, or whenever it was, when Mr. Smookler -- was that his name?

A Yes.

Q When he withdrew from the company, that left you and Dean as the sole stockholders and sole directors?

A Yes.

Q Did you ever have a directors' meeting since then?

A Not specifically, no, sir.

Q What do you mean "not specifically"?

THE COURT: What do you mean "not specifically"?

A I believe a directors' meeting requires ten days' written notice and so on --

THE COURT: Then you didn't have a directors' meeting?

A We did not have one, no.

Q You left the running of the company up to Dean?

A Basically, yes.

Q Were you present here yesterday when Mr. Vigdor displayed a check signed by you payable to Paul Dean for $10,000?

A Yes.

Q Did you have occasion to sign checks of that sort, payable to Mr. Dean?

A Payable to what individuals I couldn't tell you, but I had occasion to sign checks.

Q Ten thousand was to Mr. Dean, wasn't it?

A Yes, it was.

Q That is from the company account?

A That's correct.

Q To him, personally?

A I believe so.

Q Did you also have occasion to see the check that Mr. Vigdor displayed here yesterday that was signed by Mr. Dean on his personal account, payable to John Nichols for $10,000?

A I believe so.

Q In November of 1972 did you become aware of the fact that the City of Rochester was conducting an audit of the Paul Dean Company and of the bonds that were supposedly held by the Paul Dean Company for the City?

A Yes, inadvertently I became aware of it.

Q You knew that in November of '72?

A That's correct.

Q Have you heard of anything like that happening before?

A I believe there were audits, or periodic audits.

Q You knew it in November of '72 that the City was auditing these bonds that you speak of?

A Yes, I did.

Q Mr. Nichols, I show you Plaintiff's Exhibit 10 in evidence and ask you if you have seen that before?

A No. I believe I was asked this yesterday, and I have no recollection of having seen this or anything like it.

Q You do recognize it as a financial statement relating to the Paul Dean Company, am I correct?

A It appears to be, yes.

Q And prepared by J. K. Lasser & Company?

A Yes.

Q And, incidentally, this Mr. Metzger you speak of, your accountant, was employed by J. K. Lasser, was he not, at that time?

A At that time, yes.

Q At the time of this financial report?

A Yes.

Q And this is a balance sheet of February 29, 1972, is it not?

A Yes, sir.

Q And are you telling us that you never saw this, that it was never shown to you, that the accountant didn't furnish it to you?

A That's right.

Q And this does reflect, does it not, that at that time there was a deficit of $375,899?

A It does reflect that.

Q And it also reflects that at that time there were outstanding loans to John Nichols of $130,000?

A That is what it reflects.

Q And to Paul Dean of $319,000?

A Yes, sir.

Q At a time when the company had a deficit?

A Yes.

Q And there were also outstanding loans to Sande Broadcasting Company of $90,000?

A I would dispute that figure.

Q That is what it says there.

THE COURT: He didn't ask you if you disputed it. He said "if that shows."

A Yes, it does show.

Q Your testimony is you didn't see that but --

THE COURT: He is merely asking you what is in the statement. That merely brings it to your attention what is in the statement. You don't vouch for what is in the statement.

A Yes, sir.

Q It shows that there are outstanding loans to the Halco Chemical Company of $50,000?

A Yes, it does.

Q And these were all at a time when this balance sheet shows a deficit of $375,000?

A Yes, that is what it shows.

Q So to go back, then, Mr. Nichols, you were an officer and you were a director of the Dean Company?

A Yes.

Q You collected a salary?

A Yes.

Q You had an automobile furnished to you?

A Part of the time.

Q You had credit cards furnished to you?

A One.

Q You had authority to write checks?

A Yes, sir.

Q You wrote checks to yourself and to others?

A Yes, sir.

Q You borrowed money from the company?

A On one occasion.

Q You arranged lines of credit for the company?

A I did.

Q You arranged loans?

A I did.

THE COURT: This is just a summation. You can make the summation in your brief.

MR. CONNORS: Thank you, Mr. Nichols. That is all I have.

MR. VIGDOR: Would you mark this for identification?

(Plaintiff's Exhibit 17 marked for identification.)

REDIRECT EXAMINATION

BY MR. VIGDOR:

Q Mr. Nichols, I show you what has been marked Plaintiff's Exhibit 17 for identification and ask if you recognize that schedule?

A Yes. This was the schedule prepared by Mr. Dye, I believe.

Q And did you work with Mr. Dye and his staff in examining

the company books and your own books in order to reconcile your own account with the company after Mr. Dye went in at my request in April of 1973?

A Yes, I did.

Q Does this schedule represent the product of that joint effort on your part and on theirs?

A I have never agreed with you gentlemen on this, as you know.

Q But that represents the net result of the work that was done, does it not?

A Yes.

Q This schedule shows the financial transactions between you and the Dean Company over the period from its inception to April of 1973, isn't that correct?

A Yes.

Q And during the year 1966 to the end of the first fiscal year, May 31st, 1967, how much money did you put in and how much money did you take out aside from your investment --

MR. CONNORS: I object to that. I'm willing to have him read what is on that statement. He says he doesn't agree with it.

Q You can tell us what you disagree with about it, Mr. Nichols.

THE COURT: I would like to know the purpose of this testimony, because he said that the question of what he owed the company was resolved with you, the figure of $120,000.

MR. VIGDOR: That's correct.

THE COURT: And you disagree with that?

MR. VIGDOR: No, I agree with that, but I would like to advise the Court of the relationship over this critical period of time and how it varied over those few years, and I think this will very clearly do that.

THE COURT: That is in evidence, isn't it?

MR. VIGDOR: It has not yet been offered, but I would like to ask Mr. Nichols a few questions about it if I may, to help clarify it.

THE COURT: Why don't you offer it? You may not meet any objection.

MR. VIGDOR: All right, Your Honor. I do offer it, but I would like, with your permission, to ask one or two questions about it.

THE COURT: I was trying to save you time in asking the questions. You may not have to, if he agrees to it being offered in evidence, if there is no objection.

MR. VIGDOR: All right, Your Honor.

THE COURT: You might go on here for a half hour trying to get it in when you might get it in in one sentence.

MR. VIGDOR: I won't take a half hour, Your Honor.

THE COURT: This won't take you a half a minute.

(Plaintiff's Exhibit 17 marked for identification handed to Mr. Connors.)

MR. CONNORS: I have a preliminary question, Your Honor.

THE COURT: No. Let him go ahead. If it is not admitted in evidence, let him go ahead with the examination.

REDIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q How, Mr. Nichols, you made an original investment in the company for its stock, did you not?

A Yes, I did.

Q You testified to that yesterday?

A Yes.

Q How much was that investment?

A The stock was $15,000, I believe.

Q Then, thereafter, during the history of the company, you loaned it money, did you not?

A Yes, I did.

Q During the first year, how much did you lend it?

A Twenty-five thousand dollars.

Q Did you take back some of the money that you loaned it during that period of time?

A Ten thousand dollars.

Q And as of the end of the first year, the first fiscal year, how much money did the company owe you?

A Fifteen thousand dollars.

Q During the second fiscal year, June 1st, '67 to May 31st, '68, you loaned the company money?

A Yes, I did.

Q How much?

THE COURT: You called that the '68 fiscal year.

MR. VIGDOR: The '68 fiscal year, Your Honor.

Q How much did you lend it?

A $67,300.

Q Did you take some monies back?

A Thirty-five thousand.

Q What was your net claim against the company for loans at the end of the '68 fiscal year?

A Sixty thousand dollars.

Q Were there similar infusions and withdrawals during the '69 fiscal year?

A Infusions but no withdrawals.

Q What was the net debt to you from the company at the end of the '69 fiscal year?

A Eighty thousand five hundred dollars.

Q That was at the same time as that financial statement, which has been marked Exhibit 9 in evidence, is it not?

A Yes, sir.

Q Now, the following fiscal year, what was the net debt to you at the end of the 1970 fiscal year?

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A Forty-six thousand one hundred dollars.

Q And what was the net debt to you at the end of the 1971 fiscal year?

A The same amount, $46,100.

Q When did the Sande transaction take place?

A January of '72.

Q Before the Sande transaction, had you ever borrowed money from the corporation?

A No, sir.

Q And before January of '72, did you ever sign checks to yourself for loans made by you from the corporation, or advances to you from the corporation, other than repayment of debt from the corporation then owing to you?

A No, sir.

Q Now, in January of 1972, there came a time when the corporation was going to make an investment in this radio station that was being purchased from the Gannett Company, is that right?

A No, sir.

Q Will you describe again those circumstances? Tell us what happened?

A WHEC was for sale by the Gannett Company, and I had negotiated for the sale --

THE COURT: He has described all this before. The only question that he differs with you on is that it was being bought for the individuals, not for the company.

MR. VIGDOR: That was a mis-statement on my part, Your Honor. I knew that -- and I withdraw that.

Q Mr. Nichols, you approved the Sande loans by the corporation, the Dean Corporation, to yourself, Sayre and Dean, did you not?

A Yes.

Q That was a loan that you knew about and acknowledged and wrote checks on, wasn't it?

A Yes, it was.

Q As a result of that loan during the '72 fiscal year, what was the state of your account with the corporation at the end of May, '72?

A It shows a deficit balance of $109,000.

Q That was because you had borrowed one hundred and twenty-five for the Sande deal, wasn't it?

A That's right.

Q That is the reason for the deficit, isn't it?

A Yes, sir.

Q Aside from that Sando deal, there was never a loan, isn't that right?

A Yes. There was never a loan.

Q At the time that the corporation collapsed, the Trustee came up with a figure of $151,900, did they not?

A That's correct.

Q And that is the figure shown at the bottom of Page 1 of Exhibit 17 for identification?

A Yes, sir.

Q Did you thereafter meet and protest with Mr. Dye and with me, claiming that you were entitled to some additional credits?

A That's right.

Q And did we review your records and the company's records in light of your claims and give you certain additional credits?

A Yes, you did.

Q And does some indication of that appear on the letter to me from Mr. Dye, which is Page 3 of this Exhibit 17 marked for identification?

A Some indication of it appears, yes.

Q Does that indication represent a reduction from $151,900

to $149,525?

A Yes, sir.

Q And did you thereafter present some additional claims for credits by presenting some additional checks and some additional support?

A Yes, I did.

Q And did we thereafter liquidate the company's claim against you, the sum of $120,000?

A That's correct.

THE COURT: What do you mean "liquidate"?

MR. VIGDOR: Agree upon it.

THE COURT: That is a different thing than liquidating it.

MR. VIGDOR: I'm sorry. I will come to that.

Q Did we agree upon $120,000?

A Yes, we did.

Q Did we take your personal notes for that sum, collateralized in part to the corporation?

A The Sande Corporation you are talking about?

Q That's correct. Did we take your personal note to the Dean Company, the Trustee?

A For part of that, the balance has been paid.

Q And you paid us approximately how much of that $120,000?

A Approximately seventy thousand.

Q As of today?

A As of today.

THE COURT: Now this only means to me that you did agree with the Trustee at $120,000?

A Yes, Your Honor. I agreed with them, but I feel --

THE COURT: You didn't like to say so.

A I feel because of the personal guarantees that I still have outstanding to members of my ex-wife's family, that I may have to at some time in the future. honor, I still feel that those should be credited, that the amount that I may have to pay them at some future date should be credited.

THE COURT: You have a contingent liability that you want credit for?

A I mean I want it, but they don't agree with me.

THE COURT: All right.

Q Mr. Nichols, I direct your attention to the last page of this four-page Exhibit and ask if that represents your "Payroll Data" during the history of the Dean Company?

A Yes, I believe it does.

Q Was that prepared with Mr. Dye's assistance and with the use of your W-2 forms?

A That's correct.

Q And with the books of the corporation?

A I believe so.

Q According to this, how much were your earnings from the corporation for the '68 fiscal year?

A Seventeen thousand dollars.

Q And for the '69 fiscal year?

A Fourteen thousand, seven hundred fifty dollars.

Q And for the '70 fiscal year?

A Seventeen thousand two hundred fifty dollars.

Q And for the '71 fiscal year?

A Twelve thousand dollars.

Q And the '72 fiscal year?

A Twenty-five thousand dollars.

MR. VIGDOR: I offer this in evidence.

MR. CONNORS: No objection.

THE COURT: It is received.

(Plaintiff's Exhibit 17 marked in evidence.)

MR. VIGDOR: At this time, Your Honor, I note that I neglected to offer Plaintiff's Exhibits 16-A, 16-B and 16-C yesterday, and I offer those in evidence. Those are the corporate Minute Book, the Employment Agreement and the Shareholders' Agreement.

THE COURT: I have Exhibits 16-A and 16-B.

MR. VIGDOR: Yes, Your Honor, and Exhibit 16 is the Book itself.

THE COURT: You said "16-A, B and C."

MR. VIGDOR: I beg your pardon.

THE COURT: You've got Exhibits 16, 16-A and 16-B.

MR. VIGDOR: Yes, Your Honor.

MR. CONNORS: I have no objection.

THE COURT: They are received in evidence.

(Plaintiff's Exhibits 16, 16-A and 16-B marked in evidence.)

REDIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q Mr. Nichols, I invite your attention to what was marked as Exhibit 8 in evidence yesterday, and you recall Mr. Dye's testimony and yours to the effect that that represents a schedule of Mr. Dean's loan account with the corporation?

A That is what it indicates.

Q And you recall the testimony, back in '71, June 1, at the end of the '70 fiscal year, there was a balance owing for Mr. Dean, $45,041 and an ending balance as of the date of the corporation collapse of $557,000?

A Yes.

THE COURT: What is the date of the collapse?

A April 3rd, 1973.

THE COURT: There might be a difference of agreement among people as to when it collapsed. What do you mean by it?

MR. VIGDOR: I'm using the date of April 3rd, 1973, Your Honor.

THE COURT: That is the date of the assignment?

MR. VIGDOR: The assignment was

the 4th.

THE COURT: You mean the filing of the involuntary petition?

MR. VIGDOR: No, Your Honor.

THE COURT: What do you mean?

MR. VIGDOR: I mean the filing of the assignment for benefit of creditors was the 4th day of April, 1973.

THE COURT: All right. Now I know what you mean.

REDIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q As of the 3rd of April, 1973, what was the balance owing, according to the loan account?

A $557,318.

MR. VIGDOR: Would you mark this group of checks, please?

(Plaintiff's Exhibit 18 marked for identification.)

Q I show you a group of checks and ask that you compare them serially with the charges to Mr. Dean's personal loan account on Exhibit 8?

THE COURT: How many are there now?

* * * * *

J O H N L. N I C H O L S,

resumed the stand as a witness, having previously been sworn:

REDIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q I ask you to peruse Exhibit 18, Mr. Nichols, and extract from that the checks which you signed over this period from June 1, '71, to April 3rd, 1973.

A (Witness complies.)

Q You have extracted how many checks?

A Three.

Q Will you tell me what is the first one --

THE COURT: You read them all.

Q Read them, please.

THE COURT: You read them.

Q First, Sunaqua Resort Apartments in the sum of $20, dated August 28, 1972, is that correct?

A Yes.

MR. VIGDOR: I have them out of order.

THE COURT: We will assume it is correct unless he corrects it.

Q Then I have a second check dated September 24th, 1971, payable to Cash for $300?

A Yes.

Q And the third is a check to Mr. Paul Dean, dated February 2, 1972, for $10,000?

A Yes.

Q Do you have any recollection what the $10,000 check was written for?

A No, I do not.

Q I invite your attention to Mr. Dye's Exhibit 8 and direct your attention to the total amount of charges before credits to Mr. Dean's personal account, reflecting all of the checks drawn to Mr. Dean against which credits were later shown. What was the total number of charges represented by Exhibit 18?

A $2,428,757.75.

Q And aside from these checks totaling $10,320, were you aware of, or did you approve of, the other withdrawals totaling some two million four hundred thousand dollars?

A No, sir, I would not have loaned money continually into the company if I had been aware of that.

Q Now, Mr. Nichols, in response to Mr. Connors examination, you indicated that the Dean Company opened an Atlanta office, did you not?

A Yes.

Q I think you said that despite your objections, Mr. Dean

opened it anyway. Was that his question and was that your answer?

THE COURT: I know what the question was. You don't have to call it to my attention.

Q Then you started to say something else about what happened to that Atlanta office, and I don't know that you had a chance to finish --

THE COURT: He said it was closed.

Q Why was it closed, Mr. Nichols?

A Because it got out of hand. It was a situation of "the tail wagging the dog." There were more people working in the Atlanta office than there were in the Rochester and New York City offices.

Q And did you discuss that with Mr. Dean?

A Yes, I did.

Q And did he, as a result of that discussion, take certain steps?

A The office was closed.

Q Now Mr. Connors invited your attention to some material in an examination before trial given by you in a proceeding that the Trustee had against the firm known as Gorlin-Oakin, is that right?

A Yes.

Q And he read from Page 47 of this transcript, did he not?

A Yes.

Q I am reading from Page 46 of the transcript, where you were asked by the attorney for Gorlin-Oakin --

THE COURT: Just read it without explaining what it is. Just read it.

Q All right. The question by the attorney questioning you was as follows:

"Question: Were any personal loans made to Mr. Dean by the corporation?

"Answer: I can't answer that in the context I think you want me to. I can answer that question after the, after what happened last April, after the end of the company. I have knowledge of things now that I did not have before the company was, got in financial difficulties, or whatever.

"Question: I take it you are now aware --

"Answer: Yes, I am.

"Question: -- that Mr. Dean did borrow some money --

"Answer: Yes."

Now Mr. Connors read from this transcript on Page 36, did he not?

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A Yes, I believe so.

Q Pages 35 and 36, and he was questioning you about having seen audited financial statements?

A Yes.

Q I'm now reading from the bottom of Page 34:

"Question: On those occasions when you did stop there on this irregular basis you describe, did you review the company books or records?

"Answer: No. I accepted what Mr. Dean told me.

"Question: Was there an annual financial report on Paul R. Dean & Company, Inc., prepared by anyone?

"Answer: Yes, there was.

"Question: Do you know where those reports might be?

"Answer: The last one I have, I believe, is dated 1969."

Is that correct?

A Yes.

Q You testified that you have never seen another beyond 1969?

A No, unless I have seen some that have been introduced subsequent, some after the collapse of the corporation.

Q Meaning Exhibit 10, which you have seen?

A Yes.

THE COURT: I understand you to say now that prior to April 4, 1973, you saw only one financial statement, and that was the '69 fiscal year?

A That is the last one, Your Honor, that I have in my possession, that I recall --

THE COURT: I'm not asking what you've got in your possession. I asked if you recalled having seen them?

A That I recall having seen, yes.

THE COURT: Your recollection is now that you didn't see any financial statement except the 1969 fiscal year outside of what you learned after April 4th, 1973?

A Yes.

THE COURT: All right.

Q You continued to loan money to the corporation in 1970 and in '71, did you not?

A Yes, and raised money for the corporation.

Q Mr. Nichols, you recall Mr. Connors asking you a few moments ago about meeting with Mr. Metzger?

A Yes, sir.

Q Let's establish the date of that very clearly.

The Sande loan was when?

A January of 1972.

Q And the meeting with him, Mr. Metzger, was when?

A To the best of my knowledge, it was February of '73. I know it was a year afterwards.

Q Eleven months later, was it not?

A Thirteen.

Q Thirteen months later?

A Yes.

Q That was just about a few weeks before the meeting that you described yesterday on March 30th in the office of the company with --

THE COURT: I can figure out the arithmetic.

MR. VIGDOR: All right. I just want the record to be clear, Your Honor. I'm sorry.

Q Aside from your knowledge of a seven million dollar trading day and a four hundred thousand dollar trading profit on one day, and some other such instances that you were talking about earlier, did you have any other reason to believe that Mr. Dean was able to spend money as lavishly

as he did?

A Yes. In 1969 -- I believe it was 1969, his grandfather died, and it was my understanding, I believe, through the newspapers and what I had heard, and I never specifically asked him, but it was my understanding that he had inherited at that time a fairly sizable amount of money from his grandfather's estate.

Q Mr. Connors asked you a question about an audit being conducted by the City of Rochester in 1972, November?

A Yes.

Q And you said you were aware of that. How did you become aware of that?

THE COURT: He said "November." Was it in November?

A I believe it was November, Your Honor, yes.

THE COURT: I haven't heard the date officially from anybody yet until you fixed it in November.

THE WITNESS: I believe it was in November.

Q That is '72?

A Of 1972, yes.

Q How did you become aware of that audit?

A I had no notice or formal notice of the audit. I became aware of it when I saw Mr. Dean in Rochester. I had been led to believe that he was leaving for Florida, and I questioned him as to why he was in Rochester and not Florida, and he said that there was an audit with the City of Rochester, that he was going to New York for the audit and would proceed to Florida from there, and that was the extent, that was how I learned there was an audit.

Q Did you ever hear until after April 4th, 1973, of any noteworthy events or circumstances surrounding that audit that in any way came to your attention?

A None whatsoever.

MR. VIGDOR: You may question, Mr. Connors.

RECROSS EXAMINATION

BY MR. CONNORS:

Q As I understand it, Mr. Nichols, then as far as you know, this was a profitable organization; without your ever seeing any financial statement or looking at any financial statement, you believed that the company was prospering during these years that we have been talking about?

A Yes, Mr. Connors, and as monies that I loaned in, and as I asked for them to be repaid, they were repaid on time,

and interest on things to family was paid on time, and everything operated the way I would expect it to operate.

Q But during these same years, without looking at any financial statement or making any inquiry during these years that you believed the company was profitable, at this same time you were going out to raise money, to raise capital for it, is that right?

A Oh, yes.

Q Did you ever know what Mr. Dean's salary was, what he drew as a salary?

A Not after the employment contract, which was, I guess, for the first two years of his employment.

THE COURT: Did the Employment Agreement fix the salary?

A Yes.

MR. CONNORS: It terminated two years ago, according to this witness.

MR. VIGDOR: Yes, Your Honor. It fixed the salary at $25,000.

THE COURT: You must know. I don't want you to spend time on it. I can look at it myself just as quick as you can. All I want to know is if it was fixed.

MR. VIGDOR: That is my recollection. I would hate to be wrong.

THE COURT: I haven't heard the contract read, and I haven't seen it.

MR. VIGDOR: Right.

RECROSS EXAMINATION CONTINUED

BY MR. CONNORS:

Q And this Sande deal we talked about, is it your testimony that you at no other time borrowed money from the company?

A That is my testimony, yes.

Q Did you testify at Paul Dean's criminal trial?

A Yes, I did.

Q Were you at that time asked the question --

THE COURT: Don't ask him if he was asked a question. You've got a transcript, and you know what his testimony was. Read it.

MR. VIGDOR: What page is that on?

A Page 237.

MR. CONNORS: (Reading:)

"Question: Have you ever borrowed money from the corporation?

"Answer: Yes.

Excerpts of Trial Transcript.
John L. Nichols for Plaintiff, Recross by Mr. Connors.

"Question: On what occasions?

"Answer: I would say on a number of occasions. Specifically, are you --"

And you were interrupted.

(Reading):

"Question: What is the first occasion you borrowed money from the corporation and for what purposes?

"Answer: I honestly can't recall a first time or when it would be.

"Question: Do you recall the amount of the first occasion?

"Answer: No."

Do you recall saying that?

A I apparently made that statement. I would not stand on it at this point.

MR. CONNORS: All right. That is all.

MR. VIGDOR: I have no further questions, Your Honor.

THE COURT: Are you through with this witness?

MR. VIGDOR: Yes, Your Honor.

THE COURT: I don't want somebody calling him back later and say, "I forgot something."

MR. VIGDOR: I am finished, Your Honor.

(Witness excused.)

(Recess from 11:10 A.M. to 11:25 A.M.)

MR. VIGDOR: The Plaintiff calls Mr. Michener, please.

W I L L I A M A. M I C H E N E R,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VIGDOR:

Q Will you please state your business address?

A 1200 Sibley Tower, Rochester.

Q And by whom are you employed?

A Aetna Casualty & Surety Company.

Q That is the Defendant in this action, is that right?

A Yes, sir.

Q In what capacity are you employed by Aetna?

A I am Manager of the Bonding Department.

Q Have you brought with you your files with respect to the

bond attached to the Complaint in this action?

A Yes.

Q Do you have it with you as you are testifying now?

A Not up here.

(Documents handed to the witness by Mr. Connors.)

Q As Manager of the Bonding Department, were you deposed by me in this action in July of last year?

A Yes.

Q And at that time I demanded the production of certain documents and your entire file, did I not?

A Yes.

Q And on advice from counsel, you declined to provide me with the file for perusal, isn't that right?

A Yes.

Q And the file you have with you this morning is the same file that you had last July 9th?

A Yes.

Q Have any papers or correspondence or memoranda been removed from that file?

A Only for evidence -- some of the things were taken out of it to use as exhibits in connection with the deposition.

Q Aside from anything that was marked at the deposition,

has anything been done to that file since last July 9th?

A No.

Q All of the papers are in exactly the condition they were at that time?

A Yes.

Q Mr. Michener, when did you first bond the company?

THE COURT: That means when did you issue a bond to the Dean Company?

A In 1966, I believe. That was October 15, 1966.

MR. VIGDOR: Would you mark these for identification?

(Plaintiff's Exhibits 19 and 20 marked for identification.)

THE COURT: Is that a duplicate of the bond that is already in evidence?

MR. VIGDOR: I don't believe the bond has been offered.

THE COURT: What?

MR. VIGDOR: The bond was attached to the complaint, and it was stipulated --

THE COURT: I consider that part of the file. That is equivalent to being in evidence.

MR. VIGDOR: Then there is no need to offer these?

THE COURT: None whatsoever.

MR. VIGDOR: These are duplicates. Very well, Your Honor.

THE COURT: The paper that you have just referred to is what we have referred to here, the original bond.

MR. VIGDOR: That is correct, Your Honor.

THE COURT: And it has got a number on it.

MR. VIGDOR: Now it has, "Plaintiff's Exhibit 19 for identification," and the bond number is --

THE COURT: That is what I am referring to is the bond number.

MR. VIGDOR: Yes, Your Honor. It is 45 F 1259 BC.

THE COURT: All right.

MR. VIGDOR: For convenience purposes, may we use these Exhibits for identification?

THE COURT: Yes.

Q I show you what has been marked Exhibit P-19 for identification and what has been marked Exhibit P-20 for identification, which bears the number 45 F 1526 BCA, is that correct?

A Yes.

Q These are the two bonds involved in this action, are they not?

A Yes.

Q Mr. Michener, back in 1966, when the original bond, so-called, was issued, did you know Paul Dean?

A No. I shouldn't say that. I met him when we were arranging the bond. I did not know him previously, though.

Q And how was the bond arranged?

THE COURT: What difference does that make? The bond was issued. There isn't any question about it.

MR. VIGDOR: No, Your Honor, there is no question about it, but there is a question in this action which I hope to have an opportunity to explore, about a number of defenses that have been pleaded by the Aetna Company.

THE COURT: What, particularly?

MR. VIGDOR: The defenses in particular are --

THE COURT: Have they ever denied issuing either one of those bonds?

MR. VIGDOR: No, Your Honor, but they pleaded, among other things, in their Answer, that the Paul Dean Company, at the time it applied for the bond, it concealed its financial condition, and they pleaded that as a defense, and they pleaded as a defense that the acts of Mr. Dean are not covered, as he was the "alter ego" of the corporation.

THE COURT: Can this witness' testimony change anything in that respect?

MR. VIGDOR: Yes, Your Honor, it can.

THE COURT: I would be interested to know how.

MR. VIGDOR: May I have an opportunity to explore that?

THE COURT: Yes.

Excerpts of Trial Transcript.
William A. Michener for Plaintiff, Direct by Mr. Vigdor.

Q Your company had an underwriting manual, did it not, with respect to the underwriting of fidelity bonds for stock-brokers?

A Yes.

Q Do you have a copy of that manual with you today?

A No.

THE COURT: I'm sure the manual couldn't change it if they issued the bond.

MR. VIGDOR: Your Honor, the manual describes certain procedures that the company was to follow, and I would like --

THE COURT: Supposing they disregarded them and issued the bond, the bond would still be good.

MR. VIGDOR: It would, Your Honor, but I think it would be difficult for them to later say that there was fraud in the concealment if they never bothered to get the facts.

THE COURT: Not necessarily at all. That would depend on independent evidence.

MR. VIGDOR: I would like to question the witness --

THE COURT: Go ahead. I'm just wondering what you are after.

MR. VIGDOR: Would you mark this for identification?

(Plaintiff's Exhibit 21 marked for identification.)

Q Mr. Michener, do you recognize this as an excerpt of Pages 17, 18 and 19 and 19a from your Underwriting Manual?

A Yes.

Q And your underwriting policies involved, did they not, the most detailed description of the business operation of a stockbroker before the issuance of a bond?

A Yes, that's right, but this is 1971, and we issued this bond in 1966, the original bond.

Q How about at the time that you issued the renewal bond, Exhibit 20 for identification?

A Later regulations were enforced at that time.

Q And they required the most detailed description --

THE COURT: What regulations were in effect?

A The Underwriting Manual --

THE COURT: You just pointed out it was the '71 issue. You mean the same

provisions were in effect in 1966?

A No, sir.

THE COURT: I understand there were two bonds, but you were talking about the 1966 bond?

MR. VIGDOR: I'm sorry, Your Honor.

Q At the time the renewal bonds were issued, were these regulations in effect?

A Yes.

Q And they required the most detailed description of the business operation of the insured, did they not?

A Yes.

Q Did they also require where there was an existing risk --

THE COURT: The regulations specifically contained what you are asking?

MR. VIGDOR: Yes, Your Honor.

THE COURT: Then you don't need to question him about it. Offer that in evidence.

If you want to call it to my attention, you can read it.

MR. VIGDOR: All right, Your Honor.

THE COURT: My objection is to him paraphrasing something that you have

got in black and white in front of you.

MR. VIGDOR: I offer Exhibit 21 in evidence.

MR. CONNORS: I have no objection.

(Plaintiff's Exhibit 21 marked in evidence.)

Q Exhibit 21 provides that on existing risks, you must obtain two months prior to the renewal date a completed form, F-1146, is that correct?

A Yes.

Q Was the Dean Company an existing risk within the meaning of that?

A Yes. There was a second bond that was written, because the Standard Form 14, Broker's Blanket Bond, had been rewritten. The language had been rewritten in conjunction with the Surety Assocation and the New York Stock Exchange representatives --

Q You changed the form, is that what you are saying?

A Yes. The entire industry changed the forms, not just Aetna.

Q Was the Dean Company ever notified there was a new form with new provisions in it, to your knowledge?

A I can't answer that question.

Q You never notified them?

A We did not notify them, because we were dealing through our agent.

Q Do you know if your agent notified them?

A I have no idea.

Q But in any event, within the meaning of this regulation, the Dean Company was an existing risk, was it not?

A Yes.

Q And your regulation required that two months prior to the renewal of an existing risk, you get a Form F-1146, did it not?

A Yes.

Q What was the renewal date of the existing risk within the meaning of that regulation?

THE COURT: It was an issue of the second bond, wasn't it?

MR. VIGDOR: That's correct.

THE COURT: Why do you have to ask him that? I know that.

MR. VIGDOR: Okay.

Q Did you get a Form F-1146 two months prior to October 15, 1971?

A We did not get it two months prior to the renewal date.

We sent the form out, but we never got it completed until somewhat later. We got that form in February of 1972, late February, and sent it to our Home Office for review on March 1st, 1972.

MR. VIGDOR: Would you mark these for identification?

(Plaintiff's Exhibits 22, 23 and 24 marked for identification.)

Q I show you what has been marked P-22 for identification and ask if this is not that Form F-1146 described in your Underwriting Manual?

A Yes.

Q Is the general name of it "Control Questionnaire"?

A Yes, for stockbrokers.

Q Is there a date of November 5th, 1970?

A (No response.)

Q Does this bear a date?

A Yes, this one does.

Q So you got that when?

A I don't know when I got this one.

THE COURT: Got what?

MR. VIGDOR: This Exhibit 22, Your Honor.

THE COURT: You only mentioned that as a form. That might have been a form laying in the office there.

Q Was this received from the Dean Company?

A It was received from the Dean Company through Pete Paris, apparently. This was an anniversary date, and this was an interim request for this information. This is when we instituted this Stockbroker's Control Form. We are getting it from everybody now. It didn't have to do with the last renewal.

Q So that I understand your testimony, Mr. Michener, you are telling me, then, that this form you got before the effective date of these regulations, is that what you are now telling me?

A No, because we must have -- well, perhaps we got this in advance of this specific set of regulations. But in any event, we were required by our company to get the Stockbrokers Internal Questionnaire and Internal Control Questionnaire as to audits and practices in the corporation from all stockbrokers at all times.

THE COURT: This is becoming more confusing by the moment. I'm speaking now of Exhibit P-22 before you. When did you

get that form?

A In November of 1970.

THE COURT: You get that back from the Dean Company?

A Presumably, from the Dean Company through Peter Paris, who was our agent.

Q Through your agent, the Paris Company?

A Yes.

Q What did you do with it, Mr. Michener?

A I sent it to the Home Office for review. That was the proper procedure.

Q Did they review it?

A Yes.

Q Did you get any report on that review?

A Apparently not.

Q And there came a time thereafter when the bond came up, the original bond came up for renewal?

A Yes.

Q [illegible] was in October of 1971, right?

A Right.

Q Approximately eleven months after this Stockbrokers Loss Control Questionnaire, right?

A Yes.

Q Your Underwriting Manual would have required a new Control Questionnaire sometime around August of '71, would it not?

A Yes, that's right.

Q Did you obtain another Control Questionnaire?

A Yes, we did.

Q When did you obtain the next Control Questionnaire?

A We should have had it in October.

THE COURT: No, not when you "should have had it."

MR. CONNORS: When did you get it?

A We did not receive it until February of 1972.

Q Instead of getting it in August of 1971, you got it in February of 1972?

A Yes.

Q Is that the one that I have had marked Exhibit P-23 for identification, which is dated January 7, '72?

A Yes.

Q What did you do with that Control Questionnaire?

A We sent that to our Home Office for review.

Q And did you get a report back from your Home Office on that review?

A Yes. We got permission to issue the renewal bond.

Q In point of fact, you had already issued the renewal bond

in October of 1971, had you not?

A No, we didn't issue it until March 8, '72. We dated the coverage back to October 15th.

Q So your Home Office, after reviewing Exhibit 23 for identification in March of '72, permitted you to issue the renewal bond retroactive to April 15, 1972?

A Not "April."

Q I beg your pardon -- to October 15, '71.

A 1971.

Q Did you ever thereafter get a second Control Questionnaire in the year '72?

A Yes, but I believe that was for a separate office. They had offices in New York and in Rochester at that point, and there was one for each office.

Q Is this one which I have had marked Exhibit 24 for identification?

A Yes.

Q Where does it show on that that it is for a different office?

A It may not show in the form. That is why we got it.

Q Do you have any correspondence that relates to a second office?

A No. It doesn't specifically refer to the fact there are

two offices, but we knew that they had them.

MR. VIGDOR: Would you mark this for identification?

(Plaintiff's Exhibit 25 marked for identification.)

Q Mr. Michener, did you ever obtain any other Control Questionnaires from the Dean Company?

A That Form 11, whatever it is.

Q It is your Form F-1146?

A No. They are the only ones we had.

Q Did you ever obtain any other similar information on any other form?

A Yes. We've got it on Form F-191F.

Q May I see what you've got?

THE COURT: I can't understand it. An insurance policy is a contract, and the law of contracts applies to insurance policies. Now it seems to me what you are doing is going into the negotiations for the contract. You've got the contract. You've got the bond. They were issued.

MR. VIGDOR: Your Honor, if I may be permitted, subject to connecting it, I'm

certain that the Court will see the theory--

THE COURT: I'm not so certain.

MR. VIGDOR: This company has pleaded fraud in the inception. They have also pleaded that they were unaware of Mr. Dean's "alter ego" nature of his business.

THE COURT: What they are pleading isn't proof at all. That is an assertion of what they expect to prove at the trial.

MR. VIGDOR: Secondly, Your Honor, we have a cause of action here for punitive damages as a result of their entire course of conduct, and there is a line of cases that sanctions that in certain circumstances, which I believe we have in this case -- and if I may be permitted just a minute longer, Your Honor --

THE COURT: All right, go ahead.

Q There came a time, Mr. Michener, when in point of fact before receiving Exhibits 23 and 24 for identification, the company sought to have the Paris Agency cancel the coverage, did you not?

A We would have issued the cancellation, yes. Yes, we did,

because we were having delays getting these forms back. These are continuous bonds. As a matter of underwriting policy, we should have had them. We weren't furnished them, and we were prepared to cancel, and we got the form.

Q That was before that, in February of '72?

A Yes.

Q Did your company write Exhibit 25 to Paris-Budlong-Esse?

A Yes.

Q But you never cancelled because you thereafter received Exhibits 23 and 24?

A Yes, that's correct.

Q You said these were sent to the Home Office for analysis. Mr. Michener, would you open those forms, if you will, and tell me by reviewing the three forms, on Page 1, Question 1 on "Audits" they talk about "Name of outside auditor," do they not, and they ask whether there is one?

A Yes.

Q Now the first report, November 5, '70, indicated that the company was getting "Unannounced" and "Qualified" audits, did it not?

A Yes.

Q The second Control Questionnaire indicated that they were getting "Announced" and "Qualified" audits, did it not?

A Yes.

Q And the third form indicated that they were getting "Unqualified" and "Unannounced" audits, did it not?

A Yes.

Q Was any question ever directed to determine why their audit procedures had allegedly changed in this period of time?

A No.

Q Did the company ever question why, in each instance, the last audit report shown was May of 1969?

A No, we didn't.

Q So the company, although it had renewed the bond in October of 1971 --

A We hadn't renewed it in October of '71 --

Q -- and still never questioned the last audit, May of '69?

MR. CONNORS: I'm going to object to that question.

THE COURT: The objection is overruled.

MR. CONNORS: Exception.

A No, we didn't question it.

Q Despite the fact that you were on the verge of cancelling coverage by the proposed letter to Mr. Paris, marked

Exhibit P-25 for identification, there was still no questioning of the delay or of the variations or of the lack of audit reports at such time in '72, as you finally did receive these Control Questionnaires?

A We questioned the delay, but there is no written correspondence of that. We had some conversation.

Q Then after you got the Control Questionnaires, Exhibits P-24 and P25, there were no further questions?

A We felt on the basis of monthly audits that somebody should know the condition of the corporation. We did not ask for a financial statement from them, nor is it our written policy that we should do in on a written risk.

Q Did you ever see a financial statement from them other than the May, '69, audit?

A Yes. We got the one in '69 because they applied for a Blue Sky bond in the State of Georgia.

Q Did you ever get any subsequent to '69?

A Not to my knowledge.

Q And that is through April 3rd, 1973, is that correct?

A Yes.

Q Now I invite your attention to these Control Questionnaires in November of 1970 and February of '72, Question 7 under "Audit Procedures." On November 5th, 1970, you

were told there was an internal audit department, weren't you?

A Yes.

Q In January and in February of '72, you were told there was not an internal audit department?

A We were also told that Brown, Metzger & Byrne, or J. K. Lasser were making monthly audits.

Q Where?

A It shows who was the outside auditor. It says, "Irv Metzger."

It says, "How frequently?"

And it says, "Monthly."

Q Did you ever see a copy of any of those audits?

A No, we did not.

Q But you were told that the internal auditor was no longer present, weren't you?

A This is a very small corporation, and if you have outside CPA service, it doesn't seem very logical that you would have an internal auditor.

Q Even when they had one back in November of '70 and they suddenly don't have one in January of '72, after you have had difficulty getting a Control Questionnaire and you have been on the verge of cancellation of the coverage,

it is not unusual?

MR. CONNORS: I object. I still don't feel a corporation with a limited number of employees who is employing allegedly at least an outside CPA needs a special auditor.

Q I invite your attention to Question 18 on the November, '70, Control Questionnaire, which reads: "Are signed checks returned to persons who have requested them?"

What is the answer?

A The answer is "No."

Q Look at the same question on the next two that you've got in January and February of '72.

A It says, "Yes."

Q So they are returned to the same person that signed them ?

MR. CONNORS: I will object to that. That is not so at all. All it says is that is how they answered these things.

MR. VIGDOR: They answered "Yes," that the checks are returned.

THE COURT: That doesn't prove the fact that they did. It proves what is in the statement.

Q Is that a better audit procedure on a security procedure or worse?

A It is not. It is not a very good practice at all.

Q Did that cause any inquiry on the part of Aetna?

A The response was, "Little can be done --

Q Response from whom to whom?

A From our Home Office to our office, our branch.

The response was, "Little can be done to improve internal forms because of a firm of small size."

Q Did you ever communicate that response to anybody?

A No.

Q Did you cancel the coverage by reason of it?

A Obviously not.

Q So you were quite aware of the fact that that was going on?

A That their internal controls would not be as good as they are perhaps in a larger brokerage house.

Q Just one or two more references to this Exhibit, Mr. Michener. Now I invite your attention to the Question 32: "How frequently are the cash receipts blotters audited?"

A I presume in an organization like this they would have very little in the way of cash. It is mostly a check

business.

Q So when they changed that from "Monthly" to not answering it, you weren't concerned about it?

A No. Very few legitimate people come into a brokerage house and pay for a bond with currency.

Q I invite your attention to No. 3 on "Customers Accounts," which reads: "How often are statements showing transactions, money balance and security and commodity positions mailed to customers?"

And the first of these Questionnaires said, "Monthly when applicable," did it not?

A Yes. That is what it says.

Q What did the other two say, under "Customers Accounts," No. 3?

A It says, "Monthly" here. That is 1970.

Q And Control Questionnaire No. 3, what does it say?

A Control Questionnaire No. 3, which is dated November 5, 1970 --

Q No. 1 says "Monthly."

A "Monthly."

Q What does No. 3 say?

A Well, No. 3 doesn't say, but No. 2 does say --

THE COURT: All he is asking is what

it says, not what it doesn't say.

A It does not say -- it is blank.

THE COURT: It is blank?

A It is blank.

Q On Questionnaire No. 1 --

THE COURT: If you offered these in evidence, you wouldn't have to ask him what they contain.

MR. VIGDOR: All right, Your Honor. I will do that.

THE COURT: If you do it now, you will save time.

MR. VIGDOR: All right, Your Honor. I offer these three in evidence.

MR. CONNORS: I have no objection.

THE COURT: They are received.

(Plaintiff's Exhibits 22, 23 and 24 marked in evidence.)

Q On Exhibit 22, November 5, 1970, there is the question: "How often are securities in safekeeping and in segregation physically counted and verified with your stock record?"

And the answer was: "Monthly."

Excerpts of Trial Transcript.
Reading from Exhibits 22, 23 and 24 — Control Questionnaires.

On the succeeding two Questionnaires, the same question, and the answer, "Does not apply."

THE WITNESS: Which question is this?

THE COURT: That is not a question. He is reading what is in the Exhibit.

MR. VIGDOR: And the balance of Question No. 13 is: "How often are pledgable --"

THE COURT: He thinks because of the tone of your question you are asking him a question. You are not.

MR. VIGDOR: I am sorry.

THE COURT: He is merely reading from those Questionnaires and answers.

MR. VIGDOR: (Reading): "How often are pledgable or active box securities physically counted and verified with your stock record?"

And this is dated November of '70, and the answer is: "Monthly."

THE COURT: Listen, witness, you don't have to examine that. That is in

evidence. He is reading it, and you don't have to examine it, and he is not asking you any questions. I can see how you think he is, because he is standing up there close to you presumably so you can hear him.

THE WITNESS: Well, Your Honor --

THE COURT: Just a moment. There is no question before you.

When you are reading something, go back there, so he will understand you are not waiting for an answer from him.

MR. VIGDOR: All right, Your Honor.

Question No. 13, November, '70?

"How often are securities in safekeeping and in segregation physically counted and verified with your stock record?"

"Answer: Monthly."

"Question: How often are pledgable or active box securities physically counted and verified with your stock record?

"Answer: Monthly.

"Question: Are such verifications made by personnel other than those who cus-

Excerpts of Trial Transcript.
Reading from Exhibits 22, 23 and 24 — Control Questionnaires.

tomarily handle securities?

"Yes."

And the same Question 13 on the Questionnaire of January, '72: "How often are securities in safekeeping and in segregation physically counted and verified with your stock record?

"Answer: Does not apply.

"Question: How often are pledgable or active box securities physically counted and verified with your stock record?

"Answer: Weekly.

"Question: Are such verifications made by personnel other than those who customarily handle securities?

"Answer: No."

Exhibit 24 in evidence, Question No. 13 was not answered and is blank.

THE WITNESS: Excuse me. What date is that?

THE COURT: Just a moment, please.

MR. VIGDOR: That is February 22nd, 1972.

Excerpts of Trial Transcript.
Reading from Exhibits 22, 23 and 24 — Control Questionnaires.

THE COURT: Your counsel will take care of all of this.

MR. VIGDOR: Question 18 on the same Questionnaire, the November, '70, Questionnaire, Exhibit 22, reads:

"Where are bearer bonds (U. S. Government bonds, treasury bills, municipals, corporates, etc.) held during business hours?"

And in the November, 1970, Control Questionnaire, the answer is:

"Answer: At clearing agents."

And the question: "If held in a vault on your premises, are they within a locked metal container?

"Answer: Not Applicable.

"Question: If held in a bank, are they under a custody account or in a safe deposit box?

"Answer: Both.

"Question: If in a safe deposit box, are they under dual control?

"Answer: Yes."

And the same questions about munici-

pal bonds in January of '72, on Exhibit 23:

"Question: Where are bearer bonds (U. S. Government bonds, treasury bills, municipals, corporates, etc.) held during business hours?

"Answer: Clearing agents cage.

"Question: If held in a vault on your premises, are they within a locked metal container under dual control?"

There was no answer on Exhibit 23.

"Question: If held in a bank, are they under a custody account or in a safe deposit box?

"Answer: Both.

"Question: If in a bank safe deposit box, are they under dual control?

"Answer: No."

And the same question on Exhibit 24, in February of '72, reads:

"Question: Where are bearer bonds (U. S. Government bonds, treasury bills, municipals, corporates, etc.) held during business hours?

Excerpts of Trial Transcript.
Reading from Exhibits 22, 23 and 24 — Control Questionnaires.

"Answer: Locked fire file.

"Question: If held in a vault on your premises, are they within a locked metal container under dual control?"

There is no answer.

"Question: If held in a bank, are they under a custody account or in a safe deposit box?

"Answer: Yes.

"Question: If in a bank safe deposit box, are they under dual control?"

And there is no answer there.

The last questions from this form, No. 27, are as follows:

"Question: Are duties segregated so that no individual acting alone can prepare both sides of an entry to the securities records other than an adjusting entry which is approved by supervisory personnel?"

On Exhibit 22, in November of 1970, the answer is:

"Answer: Yes."

And on Exhibit 23, January, 1972,

Excerpts of Trial Transcript.
Reading from Exhibits 22, 23 and 24 — Control Questionnaires.

the answer is:

"Answer: Yes."

And on Exhibit 24, February, 1972, there is no answer to that question.

DIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q Now, Mr. Michener, I am going to read from Exhibit 21 and offer than in evidence. That is the Underwriting Manual --

THE COURT: Offer it in evidence first and then you won't have to encounter any objections.

MR. VIGDOR: All right, Your Honor.

MR. CONNORS: It is in evidence.

MR. VIGDOR: It is in evidence. Thank you.

(Reading):

"Custody of Securities.

"Does the broker have custody of securities, either owned by him or by his customers? If so, what is the total value and where are they kept? If in an out-of-office vault, where, and who has access? Is there joint control? If in an office

safe or vault, describe it and the alarms, if any, protecting it. Who has access to the safe or vault? How long have they been employed?"

And skipping two paragraphs, it reads:

"If Form F-1146 does not give a complete description of the Insured's procedures as to the endorsement and control of securities, give us sufficient narrative explanations so that we can understand precisely the measures taken by the Insured to protect against loss in this area."

Did you give the Home Office any narrative explanation so that it could understand the measures taken to protect loss in this area?

MR. CONNORS: I object to all this, Your Honor. It is absolutely irrelevant and immaterial. It has nothing to do with --

THE COURT: Objection is overruled.

MR. CONNORS: Exception.

THE WITNESS: Which number is this

that you were just reading from?

MR. VIGDOR: I was reading from your Manual, Underwriting Manual.

THE WITNESS: From the Manual?

MR. VIGDOR: Yes.

(Pause in the proceedings.)

THE WITNESS: We supplemented the Questionnaire on March 1st, 1972.

Q In what manner, Mr. Michener?

A We said: "Paul R. Dean & Company is a very small, closely-held corporation in which virtually all the employees are officers and, additionally, deal almost exclusively in municipal bonds, and as such, the usual exposure of having negotiable stock certificates on the premises is not a factor. Here we feel that given the type of operation, we have satisfactory controls maintained, and accordingly, we appreciate your early authorization to build this renewal."

Q You knew that Mr. Paul Dean was an employee of this corporation, did you not?

A Yes.

THE COURT: Did you know that he was President?

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A Yes.

Q Your policy covered an employee who was President --

MR. CONNORS: I object to that, Your Honor.

THE COURT: The testimony of this witness isn't going to change the coverage under this policy, no matter what he calls them.

MR. VIGDOR: I'm sorry, Your Honor.

Q There came a time when you learned that the company made an assignment for the benefit of creditors, did there not, Mr. Michener?

A Yes.

Q When was that?

A April of 1972.

Q Might it be 1973, sir?

A I'm sorry -- 1973, yes.

Q Did you at that time learn that a claim was being made under this bond?

A Yes.

Q From whom did you learn that?

A Pete Paris told us that --

THE COURT: Just a minute. Did

you learn that a claim had been made or one was going to be made?

A Going to be made.

Q When did you learn that, sir?

THE COURT: What you learned, through the auditor, that there was the possibility of a claim being made?

A Yes, sir.

Q Was that from Mr. Dye?

A Not from Mr. Dye -- well, later on from Mr. Dye. I didn't get the first knowledge of this from Mr. Dye.

THE COURT: Mr. Dye notified the Paris Agency that there was a possibility of a claim being made?

A Yes.

THE COURT: And Paris notified your office?

A Paris notified us. The first knowledge that I had that there were problems with Dean came from an attorney, Jack Keigher, who was the attorney for the corporation at that point. He did not allege any dishonesty. He said there were financial difficulties with the corporation. This was several days prior to the assignment for benefit of

creditors.

Q When and where did that occur?

MR. CONNORS: You are talking about the conversation with Keigher?

MR. VIGDOR: Yes.

THE WITNESS: Late March or early April, on the telephone in my office.

Q Now you then received a communication next from Mr. Paris?

A Yes.

Q When was that, sir?

A I'm not exactly sure of the date. I expect it might have been --

Q Was it a written communication?

A We did receive a written communication, which I turned over to the Claim Department, but I do not have a copy of it, and I'm not certain of the date of it.

THE COURT: I don't think he is talking about a written claim. He is talking about the notification from the Paris office of the possibility of making a claim -- the probability, you can call it, if you want to.

A This would have been sometime in early April. The exact date I am not certain of.

Excerpts of Trial Transcript.
William A. Michener for Plaintiff, Direct by Mr. Vigdor.

THE COURT: Within days of the assignment for the benefit of creditors?

A Probably by the 8th or 9th, I would guess.

Q That was in the form of a telephone conversation or a personal visit?

A He made a telephone call. I told him to write us a letter. He may have come personally, too.

Q Did you also have a conversation with Mr. Dye about that subject?

A Mr. Dye called somewhat later and said, after the assignment had been made, and said he was conducting an audit of the books of the Dean Company and that they had found a bond over there. He asked, "Was it in force?"

I said, "Yes."

He did not identify the bond by number, as I recall. I didn't check it. I knew we had a bond outstanding for Dean.

Q What was the date of this conversation, approximately?

A I don't know. It was after the assignment. It was sometime after the Coopers & Lybrand firm had been engaged to conduct an audit.

Q Was it several days after the assignment?

A It must have been, because otherwise, they could not have

come in and make the audit.

Q You say Mr. Dye told you they had found the bond, and he asked, "Was it in force?"

And you said, "Yes, it was"?

A Yes.

Q You had been reading in the newspaper about the Dean Company assignment, I assume, during this time?

A We were asked to write you a bond as Assignee, so I knew it had been made.

Q As a matter of fact, I had already communicated with Peter Paris, who had communicated with Aetna, to see whether they would cover me as an Assignee, hadn't I?

A That's correct.

Q What did I say to you about the fact --

A You were concerned at the outset that there might be a conflict. Peter asked a couple of others. As I understand it, he asked a couple of other companies, and their underwriting requirements were more rigid than ours. We discussed this on the phone. We felt there was a possibility of litigation surrounding this claim, but I had hoped it would not be necessary, that he wouldn't sue if a proper claim were presented.

Q Did you ever tell me there was a possibility of litigation

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at that time?

A Yes. I just said that I did.

Q In any event, you concluded that there was no conflict and you could write my Assignee bond, isn't that right?

A That's correct, because you have two different obligations.

THE COURT: We haven't got anything to do with the Assignee bond in this case. Why do you complicate the case with that?

MR. VIGDOR: I'm sorry, Your Honor.

Q Mr. Michener, when you told Dye in response to his question "Was the bond in force," hadn't it occurred to you at that point that allegedly, by the terms of the bond, it ceased automatically as of April 5th or April 4th, the filing of the assignment for benefit of creditors?

A No.

Q You didn't know that at that point?

A No.

Q You were the man in charge of underwriting for the Aetna Company?

THE COURT: He isn't legal counsel.

MR. VIGDOR: I understand that, Your Honor, but there has been a great deal of confusion of what people knew and didn't

know.

THE COURT: There isn't any confusion in my mind.

Q In any event, you did not know the bond to be terminated, or allegedly terminated, at that point?

A I should have looked the point up, and I didn't.

Q At that point you believed the bond was still in force?

A Yes, sir.

THE COURT: What bond?

MR. VIGDOR: The renewal bond.

THE COURT: Even the auditor didn't refer to any renewal bond. He said he had a bond, and it turned out it wasn't a renewal bond. It was the original bond.

MR. VIGDOR: That's correct, Your Honor.

Q And you did not know at that point that the coverage had ceased?

THE COURT: He wasn't talking about coverage. He was talking about a bond that he had found, wasn't he?

A Yes, that is what he said.

Q Did you believe that the coverage was still in existence

when Dye talked to you a few days after the assignment?

MR. CONNORS: I object, Your Honor.

THE COURT: Coverage of what? There are two.

MR. VIGDOR: On the bond, fidelity coverage.

THE COURT: There were two.

MR. VIGDOR: Your Honor, there was a lot of confusion.

THE COURT: Don't try to confuse me about it.

There were two separate bonds; one was the original bond and the other was a renewal bond.

MR. VIGDOR: I think that the evidence will indicate that nobody, but possibly Aetna, knew of the fact that there were two bonds at that early date.

THE COURT: I am surprised at that. I am surprised the Dean Company didn't know it. They applied for the bond. They got it.

MR. VIGDOR: The Dean Company was

in a shambles at that point, and we will connect it up.

THE COURT: But the personnel were still living.

THE WITNESS: I don't see why there is any confusion.

THE COURT: I don't see why we are hearing all this testimony, either.

This sounds very much like the negotiations for a contract, which under the law of contracts, is merged in the contract.

Q Did you get a letter from Paris after you told him to write you one?

A Yes. I turned it over to the Claim Department.

MR. VIGDOR: Will you mark this for identification?

(Plaintiff's Exhibit 26 marked for identification.)

Q Is that letter the first letter that has been marked in the package marked P-26 for identification?

A Yes, that is the letter.

Q And did you then step out of the proceedings and permit the Claim Department to carry on from that point forward?

A Yes.

Q And is the Claim Department located within the same physical office as your Underwriting Office?

A Yes.

Q Is Mr. Putnam the Claim Superintendent who was responsible for this matter thereafter?

A Yes.

Q You wrote one more letter, did you not, in connection with this claim?

A Yes.

Q When was that, sir?

A April 27th.

THE COURT: What year?

A 1973.

Q To whom did you write it?

A I wrote that to Pete Paris.

Q What did you tell Mr. Paris --

THE COURT: What did the letter say? Introduce it in evidence. That is the best way to get it in.

MR. VIGDOR: It is part of a series of correspondence that I had marked Exhibit 26 for identification.

THE COURT: Is that Exhibit in evidence?

MR. VIGDOR: It is not in evidence.

THE COURT: Offer it in evidence.

MR. VIGDOR: I offer in evidence that portion of Exhibit 26 as represented by a letter dated April 27th.

THE COURT: First, what does Exhibit 26 purport to be?

MR. VIGDOR: A series of correspondence, Your Honor, between Aetna and its representatives and the Plaintiff.

THE COURT: You only want one part of it. What did you mark it all for, then?

MR. VIGDOR: Because through the next witness, I hope to introduce it all, Your Honor.

THE COURT: All right.

Q What did your letter to Mr. Paris say on April 27th?

A I quoted him Section 11 --

Q Would you read the letter, please?

THE COURT: You read it.

MR. VIGDOR: All right. (Reading):

"Dear Pete:

"We feel that we should call to your attention Section 11, 'Termination or Cancellation' of this bond. Item (c) of this Section provides for immediate cancellation upon the taking over of the insured by a Receiver or other liquidator. Under these terms, our coverage ceased April 4, 1973.

"No doubt you will wish to discuss this with Mr. Vigdor."

Is that correct?

A Yes.

Q Did you ever discuss that with me?

A No.

Q Did you ever send me a copy of that letter?

A No.

Q Did Aetna receive a letter from Paris at a later date requesting that I be added as an additional insured on the policy?

A Yes.

Q Did Aetna respond to that?

A Yes.

Q And what was Aetna's response to that?

A (No response.)

Q Maybe I can help.

Aetna's response to that was this letter of April 27th?

A That is what I thought, but I wasn't certain of it. I kept looking to make sure.

Q I show you part of Exhibit 26 for identification, a letter from Paris to Aetna, dated April 11, 1973, in which they state: "Effective 4-4-73, please add the following Additional Insured to the above-captioned policy:

"Justin L. Vigdor, as Assignee for Benefit of Creditors."

Isn't that correct?

A Yes.

Q And there was no answer to that from Aetna to Paris or to anybody until April 27?

A No.

Q On April 27th you told Paris that you should point out Section 11 of the policy, and you just read that a moment ago?

A Yes.

Q Did you ever add me as "Additional Insured"?

A No.

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William A. Michener for Plaintiff, Direct by Mr. Vigdor.

Q And you never wrote to me or communicated with me?

A Our proper procedure is to communicate that through the agent.

Q Right. Did you ever verify to determine whether the agent had communicated it to me?

A No.

Q During this period of time you were meeting with me, were you not, about the Assignee bond?

A No. We had some telephone conversations.

Q Did you bring me the Assignee bond on the 12th of April to sign?

A Did I personally?

Q Yes.

A I don't remember. I doubt it, but I don't remember.

Q Did you personally sign any other letters in the course of the process of this claim?

THE COURT: If you've got some, show them to him, so he won't have to fumble around for them.

A Yes, I signed that letter.

Q Did Mr. Paris' agency request a return premium when they had been notified on the 27th of April that the bond had been cancelled?

A Yes.

Q And did you sign a letter in which you sent the credit memo returning the premium?

A Yes.

Q And you said again, "As we advised you in our letter of April 27th, the coverage is terminated automatically upon the taking over."

Is that right?

A Yes.

Q Is that the last letter that you personally signed in this claim procedure?

A To the best of my knowledge.

Q Did you personally have any correspondence with your Home Office about coverage in this case?

A Yes. We don't retain these forms, Brokers Blanket Bond forms, in the branch offices, and I wrote down to request forms to furnish you with a copy of it.

Q I hadn't had a copy of the renewal bond, right?

A We furnished it to Dean. I don't know whether you have one or not. We furnished it to Paris --

Q But you knew I was requesting a copy throughout this period, did you not?

THE COURT: Did he request a copy

of the bond?

A Yes, he requested a copy of the bond and we furnished it to him.

Q When did you furnish me with a copy of the bond?

A November 15th.

THE COURT: Now you had to get it from the Home Office?

A Yes. We don't stock the forms here.

Q November 15th of when?

A 1973.

Q November 15th, 1973, right?

A Yes.

Q And this assignment was back on April 4th, 1973, right?

A Yes.

Q And the request had been transmitted through you and Mr. Putnam since April 4th, 1973, right?

MR. CONNORS: I object to that.

A I'm not sure that that is right, no.

Q But in any event, you finally got it to me in November of '73, isn't that right?

A I can't find when you first requested it.

THE COURT: What are you talking about?

MR. VIGDOR: The renewal bond, Your Honor.

THE COURT: You didn't know then about the renewal bond?

MR. VIGDOR: No, Your Honor, and I will testify to that in due course.

THE COURT: You still thought there was coverage on the bond that had been issued in 1966?

MR. VIGDOR: We thought that bond had been renewed in the same form, Your Honor. And I will testify under oath to that, and Mr. Dye may, too, if he is called.

THE COURT: That doesn't make much difference. The question is you thought when you were Assignee for the benefit of the creditors there was one bond?

MR. VIGDOR: That's correct, Your Honor, which had simply been renewed continuously.

THE COURT: You knew as a lawyer that every bond has got a number on it, didn't you?

MR. VIGDOR: Yes, Your Honor.

THE COURT: The one that you had had a number in 1966?

MR. VIGDOR: Yes, Your Honor.

THE COURT: All right.

MR. VIGDOR: I also know that when policies --

MR. CONNORS: I object to that, if the Court please.

MR. VIGDOR: I will testify.

THE COURT: That doesn't make much difference. It isn't going to add to the case.

DIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q Mr. Michener, Aetna denied this claim when?

A I don't know.

Q You don't know the date of the denial?

A I don't know the date of the denial.

MR. VIGDOR: We will establish it with Mr. Putnam.

I have nothing further at this moment for Mr. Michener.

THE COURT: We will recess until two o'clock.

(A luncheon recess was taken at 12:45 P.M.)

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Excerpts of Trial Transcript.
William A. Michener for Plaintiff, Direct by Mr. Vigdor.

Rochester, New York

Tuesday, July 8, 1975

2:00 P.M.

- - -

WILLIAM A. MICHENER,

resumed as a witness, having previously been sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q Mr. Michener, can you tell the Court what the differences are between coverages afforded in the original bond as contrasted with the coverages on the renewal bond?

THE COURT: That is asking for an interpretation of the bond. That is my job.

MR. VIGDOR: All right, Your Honor.

Q Can you tell me if the original bond contained a so-called discovery clause?

THE COURT: You've got the bond right there, haven't you?

MR. VIGDOR: Yes, Your Honor.

THE COURT: You don't have to ask him.

Q Is there anything comparable to Sections 11 and 12 in the

renewal bond present in the original bond?

MR. CONNORS: I object to this, Your Honor. The bond speaks for itself.

THE COURT: I will sustain the objection. If there is, you've got the bond and you can point it out to me. This witness can't add one iota to it.

MR. VIGDOR: All right, Your Honor.

May I point it out to the Court at this time?

THE COURT: Yes, sure.

MR. VIGDOR: If Your Honor please, I ask the Court to observe the fact there are no comparable, I believe, so-called discovery provisions in the old bond as are alleged to exist in the new bond and that Sections 11 and 12 of the new bond have no comparable paragraphs in the old bond, and I point that out particularly with reference to the letter which has been admitted into evidence to the Paris Agency.

THE COURT: It is so noted.

MR. VIGDOR: I have no further

questions.

CROSS EXAMINATION

BY MR. CONNORS:

Q Mr. Michener, this morning Mr. Vigdor asked you about three so-called Questionnaire forms; one date 11-5-70, one dated January 7, 1972, and one dated February 22, 1972, am I correct?

A Yes, sir.

Q Do I understand your testimony to be that the first two Questionnaires that we had reference to, Exhibits 22 and 23, related to the Paul Dean Company here in Rochester?

A Yes, sir.

Q And that the third Questionnaire was submitted either in New York or Atlanta?

A Yes.

Q Do the two Control Questionnaires that relate to the Rochester office of the Paul Dean Company, on each of those, do they indicate there was an outside auditor, Irv Metzger of J. K. Lasser & Company, and that he made audits on a monthly basis?

A Yes.

Q And this was information that was submitted to you by the Paul Dean Company?

A Yes.

Q Mr. Michener, this morning you were asked about the fact that you had some conversation with the Paris-Budlong-Esse Agency about the possibility of a claim being made?

A Yes.

Q And your testimony was, I believe, this morning that you said, "Write me a letter"?

A Yes.

Q I show you Exhibit 26, the first page thereof. Is that the letter you received from Paris-Budlong-Esse under the date of April 9, 1973?

A Yes.

Q Does the letter indicate that a copy was sent to Justin Vigder?

A Yes.

Q Is the letter addressed to you at the Aetna Casualty & Surety Division?

A Yes.

Q Does it state: "This is to inform you at this time that there may be a fidelity claim under Policy No. 45 F 1526 BCA for the Paul R. Dean Company, Inc. This is to put Aetna Casualty & Surety on notice of the claim."

Is that what it says in there?

A Yes.

THE COURT: You don't have to ask him. I think what you are trying to do is point that out to me.

MR. CONNORS: Right.

THE COURT: But you can do that without asking him, because he has to look at the letter and see what it says.

Q And the letter is dated April 9, 1973?

A Yes, sir.

Q And it makes reference to that bond number?

A Yes.

THE COURT: I don't know whether that is in evidence, but I know it is going to be.

MR. CONNORS: That's right. I will offer the letter in evidence, the first page.

THE COURT: Is that part of an Exhibit?

MR. CONNORS: Mr. Vigdor marked the whole packet of papers as Exhibit P-26.

THE COURT: Let's get it all in.

Do you have any objection to all of it going in?

MR. CONNORS: I have no objection.

THE COURT: Let's have it all in evidence now, Exhibit 26, that is.

MR. CONNORS: Yes, Your Honor.

THE COURT: It is received in evidence.

(Plaintiff's Exhibit 26 marked in evidence.)

MR. CONNORS: Thank you, Mr. Michener.

MR. VIGDOR: I have no further questions.

(Witness excused.)

MR. VIGDOR: I don't believe I offered Exhibit 25, so I offer that and Exhibits 19 and 20.

MR. CONNORS: What is Exhibit 25?

MR. VIGDOR: That is that letter you checked a minute ago.

THE COURT: It is received.

(Plaintiff's Exhibit 25 marked in evidence.)

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Excerpts of Trial Transcript.
Bernard J. Putnam for Plaintiff, Direct by Mr. Vigdor.

MR. VIGDOR: Exhibits 19 and 20 have not been marked in evidence, Your Honor, but I think you indicated there were part of the Complaint, and I deem it to be.

Would you mark these for identification?

(Plaintiff's Exhibits 27, 28 and 29 marked for identification.)

B E R N A R D J. P U T N A M,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VIGDOR:

Q Mr. Putnam, will you state your occupation, please?

A Claims Supervisor with Aetna Casualty & Surety Company.

Q Were you acting in that capacity in Rochester, New York, on and after April 3rd, 1973?

A Yes.

Q Did you work out of the same office as Mr. Michener, the previous witness?

A Yes.

Q There came a time, did there not, when you were apprised of a claim being made under the Dean Company fidelity bond?

A Yes.

Q When was that, sir?

A I believe it was approximately --

THE COURT: Let's not leave this to approximation. When you say you "believe it," that means to me you don't know.

THE WITNESS: The 11th of April.

THE COURT: What was the basis of that, a letter?

A A letter, Your Honor.

THE COURT: What is the letter?

A The letter was given to me by Mr. Michener.

THE COURT: I venture to say that you've got it right there, haven't you, counsel?

MR. VIGDOR: Yes.

THE COURT: Then let's not grope for it. Offer it. Is that part of the sheet? Is it in evidence?

MR. VIGDOR: Yes.

THE COURT: Exhibit 26?

MR. VIGDOR: Yes.

THE COURT: All right. Don't ask

him about it. Read it. It is in evidence.

MR. VIGDOR: This is a letter to Mr. Michener of your office from Mr. Paris, and it reads as follows:

"Dear Bill:

"This is to inform you at this time that there may be a fidelity claim under Policy No. 45 F 1526 BCA for the Paul Dean Company, Inc. This is to put Aetna Casualty & Surety on notice of the claim.

"If you have any further questions, please contact me at your convenience."

Is that the letter you were referring to, sir?

A Yes.

Q Did you thereafter open a claim file?

A Yes, I did.

Q I show you Exhibit 28 for identification and ask if that is your opening claim, file entry?

A Yes, it is.

Q Was that prepared by you?

A This is typed by a processing and coding unit.

Q Did you direct the entries on this form?

A I did.

Q In other words, they copied and typed what you wrote out in longhand, is that right?

A That's correct.

Q Isn't it a fact that at a previous deposition you have already identified this to be exactly the same as the one that you --

THE COURT: No matter whether he did or not, it is in evidence here.

MR. VIGDOR: Okay.

Q Mr. Putnam, what was the date that this was prepared, can you tell us?

A Yes. It was prepared on 4-12-73.

Q That is the date after the day that you went there, is the date of claim, is that right?

A That would be correct.

Q Now this form shows, does it not, the effective date of the policy as 10-15-71, is that right?

A That's correct.

Q And what date does it show as the "Expiration Date" of that policy?

A It doesn't show.

Q What is the entry in the "Expiration Date" box?

A That would be the premium date.

Q What is the box called?

A It says "Expiration Date."

Q What is the entry in that date?

A Well, it is written in, "10-15-74."

Q Which part of it is written in?

A The "15."

Q Is the "10" typed in?

A Yes.

Q Is the "74" typed in?

A Yes, it is.

Q Who wrote in the "15" if you know?

A I don't know.

Q Is there anything on this claim form that indicated as of the 12th of April, '73, when you prepared it, the policy had terminated?

A On this?

Q Yes, on that?

A No.

Q Did you at the time you prepared this form believe that the policy had terminated?

A I felt it had, yes.

Q Did you communicate the fact that you believed it had to

anybody?

A Just my own feeling -- no, I didn't.

Q Did you tell Mr. Michener that you thought it had terminated?

A No.

Q Did you tell Mr. Paris that you thought it had terminated?

THE COURT: You don't write your feelings about these policies in your notes, do you?

A No, sir.

THE COURT: When you do something about the policy, is that when you make a note of it, isn't it?

A Yes.

Q You made no note about it having terminated on your claim form?

A No.

Q And you told nobody about your feelings that you thought it had terminated?

A It is not really --

THE COURT: It would be a funny file if he would write in that file what he felt about the policy.

MR. VIGDOR: But he wrote the "Ex-

piration Date" as of October, '74. That is the point.

THE COURT: He said it wasn't the expiration date. He said it was the premium date. But no matter what he said, you have got it right in front of you there.

MR. VIGDOR: I do, Your Honor.

Q I show you what has been marked Plaintiff's Exhibit 27 for identification and ask you if you recognize this Exhibit?

A I recognize it from a Claims Manual. It belongs to the Aetna Casualty & Surety Company.

Q Are those excerpts from your own Claims Manual?

A Are they? They appear to be.

Q Did you bring your own Claims Manual with you today?

A I did not.

Q Are they from the Claims Manual that you made available to me upon demand?

A They are.

MR. VIGDOR: I offer this in evidence as Exhibit 27.

MR. CONNORS: May I look at it. Is that the stuff that I gave you?

MR. VIGDOR: That is the stuff you

gave me.

(Plaintiff's Exhibit 27 handed to Mr. Connors.)

MR. CONNORS: I object on the ground that it is irrelevant.

THE COURT: If that is the only objection, I will receive it. I want to know all there is to know about the case. This is a little different, trying a case before a Court than before a jury. In deciding this case, if I consider this irrelevant, I won't consider it in deciding the case. There is no danger in letting evidence in. There is greater danger in excluding it.

MR. VIGDOR: I will read briefly, Your Honor, from Page A-6-1 of the Claim Manual, Exhibit 27:

"The Committee believes that anyone who has, or thinks he has, a claim against the company is entitled at all times to courteous, fair and just treatment from the

representatives of that company. A claimant is entitled to an investigation of his claim and a reasonable prompt statement of the company's position with reference to it."

Reading from Page B-1-1:

"Do not take any technical or unreasonable position on questions of coverage. Give careful consideration to coverage questions for either a denial or for the possibility of our underwriters securing additional premiums."

Page B-6-1 reads as follows:

"Delayed notice occurs if, and only, if the insured or his representatives has knowledge of an accident or loss long prior to his reporting same to us."

Page E-3-3 under the heading of "Fidelity Bond Claims" reads as follows:

"Letters of Acknowledgment.

"All notices of claims based upon employee dishonesty should be promptly acknowledged in writing. The following, as a general format only, is suggested:

And then a form letter follows in your Claim Manual.

DIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q Were you familiar with this Underwriting Manual on and prior to April 9, 1973, sir?

A Yes.

Q I beg your pardon -- the Claim Manual?

A Yes.

Q Now when you received Mr. Paris' letter of April 9th, 1973, and you opened up your claim file, Exhibit 28 for identification, did you promptly acknowledge that in writing?

THE COURT: Counsel, if he didn't, it doesn't make the slightest bit of difference because it was a claim anyway.

MR. VIGDOR: I know, Your Honor.

THE COURT: And it was entitled to be read as a claim.

MR. VIGDOR: I know, Your Honor, but we have pleaded a cause of action for punitive damages for deliberate impediments for unconscionable business conduct, and I believe we are entitled to establish the

conduct of Aetna in this case.

THE COURT: All right. For the moment I forgot you were asking for punishment damages.

MR. VIGDOR: I'm sorry.

THE COURT: That is exactly what it means "punitive." That means "punishment."

MR. VIGDOR: I understand, Your Honor.

THE WITNESS: I wrote to you on April 19, 1973. That was the first response to my letter --

THE COURT: What was the date of the letter?

A April 19, 1973, Your Honor.

THE COURT: What was the date of the reply?

Q The date of the letter was the 9th of April, Mr. Paris, and your reply was April what?

A April 19, 1973.

THE COURT: And I take it you are claiming that is an unreasonable delay?

MR. VIGDOR: No, Your Honor, I'm not, but I'm tracing a course of conduct here.

Q Between the time of your reply to me of the 19th of April, did Aetna receive a communication from Mr. Paris' office requesting that I be added as an additional insured to the policy?

A I don't know.

Q I show you Exhibit 26, which was marked at your own examination a year ago --

THE COURT: You don't have to ask him. It is in evidence.

Q I show you this memo, dated April 11th, '73. (Reading): "Effective 4-4-73, please add the following additional Insured to the captioned policy:

"Justin L. Vigdor, as Assignee for Benefit of Creditors."

It is in evidence.

THE COURT: What is it you are asking him?

MR. VIGDOR: I'm asking him if Aetna received that.

THE COURT: No matter whether they

did or not, it is in evidence. That is the equivalent of them getting it.

MR. VIGDOR: All right. I withdraw the question.

Q Also in evidence is a letter from me dated April 16th, 1973, to Mr. Paris in which I transmitted a copy of a letter that I had received as Assignee from the firm of Nixon, Hargrave, Devans & Doyle, which firm demanded that I, as Assignee, assert claims under all existing policies of the Dean Company, and I sent a copy of that to Mr. Paris with the request that he take all of the foregoing actions as is necessary.

When did you first see a copy of that letter, Mr. Putnam?

A I have a copy in my file.

Q So that was transmitted to you by Mr. Paris?

A Yes, it was.

Q And you had that before you wrote me on the 19th of April?

A I don't have a date stamp, so therefore I can't say when I received it.

Q In any event, it was dated April 16th?

A Mine is dated April 12th.

Q The letter from Nixon is April 12th and the letter from

Paris is April 16th.

Now, Mr. Putnam, you wrote me this letter on April 19th in response to the first communication that you received, dated April 9th and received on April 11th, and enclosed a Notice of Discovery form, so-called, is that correct?

A That's correct.

Q And that is this letter to me of April 19, 1973?

A That's correct.

Q Now in this letter, of course, you didn't tell me that Aetna claims there was no coverage and that the bond terminated, did you?

A No, I didn't.

Q And had you, up to this time, told Mr. Paris that, or anyone else that?

A I don't believe it was a fact at that time.

Q Doesn't Aetna now claim the bond terminated immediately upon --

THE COURT: The policy would show that if it was automatic. If it was automatic, it required no action on anybody's part.

MR. VIGDOR: Right.

Q Now did you receive that discovery bond from me?

A Yes, I did.

Q As a matter of fact, I sent it back the same day I got it, didn't I?

A I can't answer that.

THE COURT: You are not talking about a "discovery bond"?

MR. VIGDOR: I beg your pardon. Notice of Discovery.

Q My letter back to you is dated the same day, isn't it, April 27th, '73?

A Yes.

Q And you received it on May 2nd, '73, by your own stamp?

A That's correct.

Q And it has a discovery form filled in, does it not?

A It does.

Q Now on the same day Mr. Michener wrote a letter that he has testified to earlier, to Mr. Paris, calling Mr. Paris' attention to Section 11, "Termination or Cancellation" of the bond. And he said, "No doubt you wish to discuss this with Mr. Vigdor," doesn't it?

A That is what it says.

Q You were aware of that letter at that time, weren't you?

A Immediately on the 27th I don't know if I was or not.

Q Were you aware of it within a day of it?

A I don't know when I was first made aware of the letter.

Q In sending me the Notice of Discovery on the 19th, were you acting pursuant to instructions from your Home Office?

A Yes, I was.

Q Do you have a copy of those instructions with you today?

A (No response.)

Q Are you perusing the same file that you had at your oral deposition?

A Yes, I did.

Q Has that file been purged or altered in any fashion?

A No.

THE COURT: You can look any place you want to. You are not restricted to that.

THE WITNESS: I was acting on instructions that I received on 5-8-73 from my Home Office, Bond Claim Department.

Q I asked you whether you were acting under instructions when you sent me on April 19th a Notice of Discovery form?

A I'm sorry.

Q So these instructions came after that, is that correct?

A Yes, they did.

Excerpts of Trial Transcript.
Bernard J. Putnam for Plaintiff, Direct by Mr. Vigdor.

Q Can you now tell us when you first learned of Mr. Michener's letter of April 27th to Paris, telling him to discuss the termination and cancellation with Vigdor?

A I cannot tell you when I got it. I have a copy of it. I don't have a date stamp.

THE COURT: I presume the copy is dated, is it?

A Yes. It is the same copy he has here, Your Honor.

THE COURT: What is the question? I think the confusion mostly results when the witness doesn't exactly know what the question is.

MR. VIGDOR: I'm sorry, Your Honor. I will pass that for the moment.

Q Mr. Putnam, when you got my Notice of Discovery with my letter dated April 27th, which you received on May 2nd, what did you do with it?

A I forwarded it to my Home Office, Bond Claim Department.

Q Did you ever communicate with me, telling me that Mr. Michener had told Mr. Paris to have a discussion about a cancellation of the bond?

A Would you repeat that?

(Last question read.)

THE WITNESS: I don't believe that I discussed it with you.

Q When you sent it to the Home Office, what is the next communication you received from anyone with respect to this bond?

A The one that I had out just a minute ago. It is this one (indicating).

(Plaintiff's Exhibit 30 marked for identification.)

MR. VIGDOR: Do you have any objection, Mr. Connors?

MR. CONNORS: No.

(Plaintiff's Exhibit 30 marked in evidence.)

Q They suggested you write me a letter, and it reads:

"Suggest you write attorney Vigdor as follows: We acknowledge receipt of your letter of April 27th with discovery form enclosure. Among other things, we call your attention to the coverage period, exclusions, and particularly, Sections 11 and 12 of the bond. Considering that our information is extremely limited, we will make no final determination until all available and relevant information has been received and considered.

Please be advised that our attention to this matter is not to be construed as a waiver of any of the terms and conditions of the bond.

"Very truly yours."

Is that right?

A That's right.

Q That is what they told you to write me, right?

A Right.

Q And what did you do?

A I wrote you.

Q When did you write me, then?

A May 10, 1973.

Q And you used exactly the words that they told you to write me in, didn't you?

A I believe I did.

Q So between my sending you the Notice of Discovery, you communicated with your Home Office, and you got these instructions and you sent me this letter?

A Correct.

Q Were you aware that on May 4th, 1973, during this period of time and after the 27th of April, '73, when Mr. Michener first called Mr. Paris' attention to Sections 11 and 12 of the bond, a thirty-day period had allegedly expired within

which to request an opportunity for a Receiver or a Trustee in Bankruptcy or an Assignee to request an additional discovery period?

A Was I aware of that?

Q That's right.

A No. The thirty days that elapsed I would not say that I was.

Q You knew that the assignment occurred on April 4th, '73, did you not?

A Yes.

Q And did you know that the bond, that the renewal bond, so-called, had a so-called thirty-day discovery provision in it?

A Did I know?

Q Did you know?

A I read the bond and found it.

Q When did you find it?

A I believe it was pointed out to me on 5-14-73.

Q It was pointed out to you after the 14th of May, '73, is that right?

A It appears that way.

Q Is that a memo that you are reading from your Home Office?

A Yes.

Q So at the time in May of '73, in early May, after Mr. Paris' letter and after Mr. Dye's phone call and after my phone calls and after --

THE COURT: You are complicating the question.

MR. VIGDOR: All right, Your Honor.

Q No one in your office in Rochester was aware of that provision, is that your testimony?

A I don't know.

Q Or is it that you didn't know about it, is that right?

A That is all I can testify to.

Q Mr. Michener knew about it on the 27th, judging from his letter from Mr. Paris, isn't that so?

A Of what month?

Q Of April. Here is his letter, Mr. Putnam (indicating).

A Yes, he was.

THE COURT: It is superfluous to ask this question of that witness if he knew it or --

MR. VIGDOR: The letter speaks for itself.

THE COURT: I know it does. Why do you speak of it?

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Excerpts of Trial Transcript.
Bernard J. Putnam for Plaintiff, Direct by Mr. Vigdor.

MR. VIGDOR: I'm sorry, Your Honor.

Q You and Mr. Michener shared the same office, didn't you?

A No.

Q Well, adjoining offices?

A No.

Q How far are your desks, in terms of feet, Mr. Putnam?

A In terms of feet?

Q Yes, the length of this courtroom?

A Probably.

THE COURT: Well, the Bankruptcy office isn't far from here, but I'm sure I don't know what goes on in that office very intimately. Georgraphy doesn't make much difference.

Q This claim was in the newspapers daily at this point, was it not?

A Yes.

Q Did he ever mention to you that he had written Paris that the bond allegedly had terminated?

A We discussed that. I don't recall the date, Mr. Vigdor.

Q Did you discuss it before hearing about it from Mr. Baker on May 14th?

A I don't recall the date that we did discuss it.

Q You may have?

A I couldn't rule it out.

Q And you certainly didn't tell me about it when you wrote me and sent me the Notice of Discovery on May 10th? That is clear, isn't it?

A That is clear.

Q You sent me the Notice of Discovery on April 19th?

A Yes.

Q Then when you wrote me on May 10th and you used exactly the language that Mr. Baker told you to use, you referred to Sections 11 and 12 of the bond, right?

A That's correct.

Q They referred to the renewal bond, as we have designated it in this action, didn't they?

A Yes.

Q In fact, there are no Sections 11 and 12 in the original bond, are there?

THE COURT: That is a superfluous question, because whatever he says about it, it can't change it, and you've got the bond in front of you.

MR. VIGDOR: I ask the Court to take judicial notice of that fact.

THE COURT: I am not taking judicial notice. It is in evidence. That is different than "judicial notice." I look at the evidence before me.

Judicial notice is what you are supposed to know because you are a judge.

MR. VIGDOR: I'm sorry, Your Honor. I know I am wrong on that.

Q Mr. Putnam, Mr. Baker wrote you on the 14th of May, '73, and this is in answer to a communication to him, is that correct?

A That's correct.

Q And he is at the Home Office of Aetna, isn't he?

A Yes, he is.

MR. VIGDOR: And this Exhibit says, and I am going to read it in part:

"The bond applies with respect to covered loss sustained by the insured at any time, but discovered during the bond period.

"Under Section 11 of the bond, it shall be deemed terminated or cancelled as an entirety immediately upon the taking over of the insured by a Receiver or other

liquidator or by State or Federal officials.

"We understand that Justin L. Vigdor was appointed Assignee for the Benefit of Creditors on April 4, 1973.

"The bond terminated April 4, 1973.

"So far, there is no evidence, report or notice, that the insured or any officer not in collusion had knowledge of information that Dean had committed any fraudulent or dishonest acts in the service of the insured or otherwise. The time for the insured to discover loss expired at the termination of the discovery bond.

"Under Section 12 of the bond, when the bond was terminated by reason of the taking over of the insured by the Assignee, for the benefit of creditors, the Assignee had, within thirty days, the right to give Aetna, as underwriter, notice that he desired under the bond an additional period of twelve months, within which to discover loss sustained by the insured prior to the effective date of such termination and shall pay

an additional premium therefor.

"At this point, the thirty days have expired, and the Assignee has not requested an additional period, nor has he paid an additional premium therefor."

Now, incidentally, Mr. Putnam, during the thirty days you did receive the request from the Paris Agency to add Vigdor as an additional insured?

A Yes.

Q The company did?

A Yes.

Q It is in your file?

A A copy of it is.

Q Yes, and the letter in which Paris was told to take all necessary action, you read those words in the letter to Paris?

A Yes.

Q And you read those words in the letter from Nixon, Hargrave, "to take all necessary action"?

A The letter from Nixon, I believe, is to you.

Q Yes, but you had a copy of it?

A Yes, right.

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Excerpts of Trial Transcript.
Bernard J. Putnam for Plaintiff, Direct by Mr. Vigdor.

Q And that was the import of it, wasn't it?

A That's correct.

Q But the necessary action wasn't taken by anyone at Aetna, was it?

A I think it was.

Q Well, was anyone advised before May 4th to obtain a discovery period?

A I don't believe that that was invoked.

Q By the Assignee?

A No, I don't believe that it was raised as a defense, that it wasn't asked for. I'm not sure.

Q Now Mr. Putnam, continuing on with Mr. Baker's directions to you, and now I will read it:

"The fact is that the Assignee did not keep the discovery bond alive.

"Loss discovered by the Assignee in the absence of his compliance with the terms of the bond, request for extension, and payment of premium, is not covered.

"As the claim stands from a claim viewpoint, since loss was not discovered by the insured during the bond period, we have no alternative but to decline coverage for loss discovered by the Assignee, since any discovery by the Assignee has to be subsequent to termination.

"It appears to me that Vigdor came pretty close to requesting the required extension.

"He furnished the agent with a demand letter from Lincoln Bank attorneys that he fully comply with any and all terms and conditions of the bond and requested the Aetna agent, on his behalf as Assignee, to take action as necessary to comply with the demand.

"In lieu of complying with Section 12, the agent made the request that Vigdor be added as an additional insured and was advised by Mr. Michener that this could not be accomplished, since coverage ceased April 4, 1973.

"It is possible that Vigdor will claim that his request to the agent of April 16 amounted to compliance with Section 12 and that he will pay/the premium when billed by the agent."

Incidentally, at this time we had a credit balance with the Aetna?

A No.

Q Do you know that subsequently we received a refund for unearned premium on the so-called original bond?

A Under that the premium was returned.

Q Now with reference to the Lincoln Bank and Attorney Burns' letter --

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Excerpts of Trial Transcript.
Bernard J. Putnam for Plaintiff, Direct by Mr. Vigdor.

THE COURT: You say it was returned?

A There was correspondence that I saw --

THE COURT: I'm not talking about the correspondence. I'm talking about whether the premium was returned and kept.

A Do I know that it was returned and kept? No, I don't.

THE COURT: In the absence of proof, I will assume when it was returned, it didn't get back to the company again?

A It would not come to me, Your Honor.

THE COURT: I understand that.

MR. VIGDOR: (Reading):

"With reference to the Lincoln Bank and Attorney Burns' letter of April 12th, 1973, the Aetna bond does not apply to dishonest acts of an insured."

And then it goes on to discuss some other facts. Then he says:

"If possible, please identify the officers and directors and the principal stockholders. Hopefully, this is a one-man corporation and the acts of Dean would be the acts of the insured.

"Vigdor has claimed loss of $250,000 through the dishonesty of Paul Dean."

That is what he said, right?

A Yes.

Q Now what was the next thing that you did, Mr. Putnam, when you received Mr. Baker's instructions of May 14th?

A (No response.)

Q Maybe I can help you.

You sent him a copy of a clipping from the Daily Record, didn't you?

A I know I sent it, but I'm not sure of the exact date. I could find it.

Q That clipping said that the company was petitioned into involuntary bankruptcy?

A I sent the clipping on May 11th.

THE COURT: What is the date of the publication?

A I am not sure, Your Honor.

Q In any event, you got another memo from your Home Office, didn't you, on May 15th, '73?

THE COURT: You have got it. Show it to him.

(Memo handed to the witness.)

A Yes.

Q That memo was also from Mr. Baker, and it reads: "Thanks for the information that on April 27, 1973, creditors petitioned Paul R. Dean & Company into involuntary bankruptcy and that the Petition was filed on April 30, 1973. Burns, Suter & Doyle are listed as attorneys for the creditors. Previously, Paul R. Dean & Company, Inc., declared insolvency, and on April 4th, 1973, Justin Vigdor was appointed Assignee for the Benefit of Creditors. This is a State proceeding, and presently, the insured is under Federal Bankruptcy proceedings. With reference to my I.O.C. --"

And "I.O.C.", does that mean inter-office correspondence?

A Yes.

Q Inter-office correspondence of May 14th, '73? That is the day before, correct?

A Right, correct.

Q (Reading): "With reference to my I.O.C. of 5-14-73, suggest you do nothing but sit tight and await developments. In the near future, under Section 2 (U. S. Code 11), the Court will require Vigdor to deliver property in his possession, or under his control, to the Receiver or Trustee

appointed under the Bankruptcy Act. It remains to be seen whether or not such Receiver or Trustee will seek an extension under Section 12 of the bond, or will claim loss through employee dishonesty.

"Will look forward to further advice."

What did you do after you got that memo?

THE COURT: It told him to do nothing.

MR. VIGDOR: I think that's right. I think that is what I mean.

In point of fact, you did nothing from that point forward, Mr. Putnam?

A Until what time?

Q Well, you did nothing, but you received --

THE COURT: I am sure that wasn't the end of the case.

MR. VIGDOR: No, it wasn't.

THE COURT: I am sure that is not what you mean by your question.

MR. VIGDOR: No. That is correct, Your Honor.

THE WITNESS: I sent a copy of the newspaper clipping.

Q In any event, you didn't communicate with me until I com-

municated with you next, did you?

A That's correct.

Q And finally, on June 14th, and this was a month later --

THE COURT: Probably after the Trustee had been appointed.

MR. VIGDOR: That's correct, Your Honor. Well, we were going to appear in Federal Court for the appointment of the Trustee.

THE COURT: You were in Federal Court from the time the involuntary petition was filed?

MR. VIGDOR: Yes, Your Honor, but we had a hearing on schedule.

And I wrote you a letter on June 14th, and it reads as follows:

"Dear Mr. Putnam:

"In your letter of May 10, 1973, you indicated that you were making an investigation regarding our claim under the Paul R. Dean & Company fidelity bond.

"This matter will be discussed in Federal Court next Tuesday, and I would like

to know, if possible, the results of this investigation before that time."

You received that letter, didn't you?

A Yes.

Q And you knew that I was going to file that final account which Mr. Connors has marked Defendant's Exhibit 1 for identification --

THE COURT: I suppose you mean the Receiver's account?

MR. VIGDOR: The Assignee's final account, Your Honor.

THE COURT: The Assignee's report to the Receiver?

MR. VIGDOR: Yes, Your Honor, and the Receiver's report to the Court. And I was --

THE COURT: Are you talking about one or the other or both of them?

MR. VIGDOR: They were combined in Exhibit 1.

THE COURT: All right. Then you are talking about two reports?

MR. VIGDOR: No. It is one report, Your Honor.

THE COURT: It isn't one report. It couldn't be one report. They are in two separate capacities.

MR. VIGDOR: Yes, Your Honor.

THE COURT: It might have been in the same book.

MR. VIGDOR: That is what I mean, and one was filed in the Monroe County Courthouse and one was filed here, Your Honor.

THE COURT: As a matter of fact, there were two proceedings. There certainly couldn't be one report.

MR. VIGDOR: No. I'm sorry. I beg your pardon.

Q Now did you then communicate with me after my letter of the 10th?

A The 10th? Which letter is the 10th?

MR. VIGDOR: That is the one I read you a moment ago.

THE COURT: Show him the letter right now.

THE WITNESS: I can't read the date on mine. That is all.

Q There was no communication with me back in May 10th to my letter of June 10th, right?

A I did not have any reason to.

Q No reason to communicate with me?

A No.

Q Then when you got my letter of June 10th and I told you I was going to be in court on June 12th, you still had no reason to communicate with me, is that right?

A I did not respond to this letter.

Q You did not respond to it?

A No.

Q You were sitting tight at this time, is that right?

THE COURT: If not responding means "sitting tight," that is exactly what he was doing.

Q And I finally wrote you another letter, did I not, and --

THE COURT: He was working for Aetna, not for you.

MR. VIGDOR: I understand, Your Honor. That is why we are suing for punitive damages here.

THE COURT: You mean because he was working for Aetna, you are suing for punitive damages?

MR. VIGDOR: No, Your Honor, because we believe under the authorities, the conduct of Aetna in this case has been unconscionable, and I think that the cases that we have cited and the facts, as they will develop, will support that.

Q Did you have during this period of time a secretary named Mrs. Creighton?

A No.

Q What was her name?

A I don't recall my unit girl's name at that point.

Q Did you receive telephone messages --

THE COURT: Just a moment. Don't leave it at that.

Do you have a private secretary?

A No, sir, I don't.

THE COURT: That is what he is referring to.

THE WITNESS: I do not have a private secretary by the name of Creighton.

THE COURT: You have a pool of stenographers that work for you?

A I have a unit processor. That is what we call her. She does answer the phone.

THE COURT: When you want a secretary, you push a button and somebody comes in?

A She sits right in front of me, sir.

Q You told me her name once before. What was her name?

THE COURT: You first asked him whose secretary it was, and he hasn't got any, so he couldn't very well give you her name.

THE WITNESS: I believe it is Cowenale.

THE COURT: Did he give the name before?

MR. VIGDOR: I'm looking for the last section of the testimony, Your Honor, at this examination.

THE COURT: Did he give you the name before of this girl that did the typing?

A I don't recall.

THE COURT: I am not asking you -- I am asking Mr. Vigdor.

MR. VIGDOR: I have the name, Your Honor. I'm trying to find it.

THE COURT: You must have gotten it from somebody, then.

MR. VIGDOR: I did get it from somebody, Your Honor.

THE COURT: Did you get it from Aetna?

MR. VIGDOR: I think I got it from the lady herself.

THE COURT: She worked for Aetna, didn't she?

MR. VIGDOR: She did.

THE COURT: She was fair with you. She gave you her name.

MR. VIGDOR: Yes, Your Honor, she did. She gave me her name. She gave it to me, and I wrote it down that it was Mrs. Creighton.

THE WITNESS: I had a girl by the name of Ellen Creighton working as a Claims

Representative, but not as a secretary.

MR. VIGDOR: Okay. Thank you, Mr. Putnam. I'm sorry. I identified her incorrectly.

Q Did she tell you that I was calling about every day during this period of time?

A No, she did not.

THE COURT: Raising your voice doesn't impress me one iota. That goes big with the jury but not with me.

MR. VIGDOR: I'm sorry, Your Honor.

Q In any event, Mr. Putnam, I wrote you another letter dated July 19th, did I not, and I asked you why we had not heard from you since my letter of June 14th and whether or not there was anything that your company was lacking in order to settle the claim.

(Reading):

"You indicated to me that you did not know what more, if anything, was needed and would take the matter up with your Home Office. I advised you that I was acting as co-counsel to Mr. Carges, the Court-appointed Trustee, and that we have been ready and willing to furnish any additional information that you might require in order to

effect a prompt and expeditious settlement of this claim without the necessity of an action on the bond.

"I look forward to hearing from you or your Home Office as soon as possible."

That is July 19th and received by you July 20th, right?

A Right.

Q When did you next get in touch with me?

A I wrote you on July 20th.

Q And what did you tell me on July 20th?

THE COURT: You've got it right in front of you.

MR. VIGDOR: (Reading):

"In your telephone call of July 18th, 1973, you intimated we should be responding to a claim previously filed. There seems to be a misunderstanding. In response to your letter of April 27th, 1973, we indicated in our letter of May 10th, 1973, the possible application of certain conditions and exclusions of the bond and that we would not make a final determination until necessary information had been received.

"You will realize that the 'Notice of Discovery of Loss' form is not a Proof of Loss and that a formal statement of claim is necessary in accordance with the conditions of the bond.

"In direct response to your question of what is required, we must again refer you to the conditions of the bond. For your convenience, we enclose a Proof of Loss form, which you may submit, or alternatively, you may submit such other appropriate summary as you wish."

And you pointed out again Sections 11 and 12 --

MR. CONNORS: If you are going to read it, read it all.

MR. VIGDOR: All right. (Reading):

"You will understand that our furnishing a Proof of Loss form and any attention or investigation by us necessarily is without prejudice to anyone's rights and is not in any way to be a waiver of any of the terms and conditions of the bond. And,

and avoid any misunderstanding, we must again direct your attention to the terms and conditions of the bond, and particularly to the coverage period, Exclusions, and Section 11 and 12 -- all as pointed out in our letter to you of May 10th, 1973."

Right?

A Right.

Q Was that letter written for you by the Home Office?

A Yes.

Q Did they, in directing you to write that letter to me, give you any other directions or instructions?

A I don't believe so.

Q May I see the directions that you received?

A I don't see where I have a I.O.C., inter-office communication.

Q In any event, after your letter of July 20th, I wrote Mr. Paris on July 23rd, stating:

"Dear Peter:

"I am enclosing copies of my entire file of correspondence with Mr. Putnam concerning the Aetna Fidelity Bond claim.

"Anything you can do to specifically find out what

they want to know to speed the claim would be greatly appreciated.

"Also, could you please arrange to get the Receiver bond refund.

"Thank you very much for your assistance."

And you got a copy, or Aetna did, of that letter, did they not?

A I don't believe that I have a copy of that letter.

Q Do you know if Mr. Michener got a copy of that letter?

A I can't speak for Mr. Michener.

Q Did you ever get in touch with me in the interim after that?

A (No response.)

Q Before my letter of July 27th?

A Not prior to my other correspondence.

Q On July 27th, I wrote you and said:

"I regret that I am, to some extent, still confused by our recent correspondence by your vague reference as to what is needed to process the claim in the above matter.

"Under the circumstances, I formally accord to you, or any other representative, to meet with the Trustee in Bankruptcy, the independent accounting firm for the Trustee and myself, at any time at your convenience, in

order to review the books and records of the Dean Company, which completely show the covered loss in excess of the policy.

"Will you kindly let me know when you would like to meet."

And you received that on the 30th, by your own stamp, didn't you?

A Right.

Q Isn't it by certified mail?

A Yes.

Q Then what did you do?

A You and I --

Q Wait a minute -- didn't you communicate with the Home Office?

A Yes. I would assume that I would have accepted a copy of the letter.

Q Where is your I.O.C. with the Home Office?

A I have a reply -- I called the Home Office on the telephone in response to your letter.

MR. VIGDOR: May we have the reply?

(Letter handed to Mr. Vigdor.)

MR. VIGDOR: Would you mark this

for identification?

(Plaintiff's Exhibit 31 marked for identification.)

THE COURT: What is P-31? I want somebody to tell me, either you or the witness.

Q Is that the response you received?

A P-31 is dated August 3, 1973, and is an inter-office communication from my Home Office to me.

THE COURT: What is the date of that?

A August 3rd, 1973.

THE COURT: All right.

Q When you told them about my letter requesting a meeting by certified mail, they wrote you back the following:

"Dear Bernie:

"This is to confirm our telephone conversation of August 1, 1973.

"We suggested that you meet with Vigdor and Carges in order to obtain particulars and full information. So far, our information is limited to the declaration by Vigdor that 'funds of the company and funds of the customer were misappropriated and diverted over a period

of time.'

"Who, how, when, where, discover each act alleged dishonest, resulting in loss to the insured. You are aware that the bond does not cover loss through the dishonesty of the insured. It does not cover trading losses, whether dishonest or not. Was Dean the principal stockholder? Did Dean own Paul R. Dean & Company, Inc.?

"In addition to the above, we refer to the memo of 4-11-73 from Paris-Budlong-Esse, Inc. 'Effective 4-4-73, please add the following additional insured to the above-captioned policy, Justin L. Vigdor as Assignee of Creditors' executed, Mrs. J. Frankunes.

"We have a copy of Vigdor's letter to Peter Paris of 4-16-73 and a copy of Mr. Michener's letter to the agent of April 27, 1973. Did the agent discuss the matter with Vigdor? What conclusion was reached? Did Vigdor make further request? Did he review the bond? Was additional premium mentioned? Exactly how was the matter left with Vigdor?

"Is it possible that the insured (an officer not in collusion) learned of any dishonest or fraudulent act on the part of Dean prior to the date of when Vigdor took over the company? By this, we mean discovery by an offi-

cer not in collusion prior to the takeover by the liquidator.

"Check to see if any legal proceeding has been instituted against Dean, and if so, obtain copies of material suit papers.

"We will look forward to receiving your prompt and good advices."

Now, Mr. Putnam, did you do any of the things that he suggested?

A I met with you.

Q Is that the only thing you did?

A We discussed --

Q Wait a minute. Before the meeting, did you do anything else?

A (No response.)

Q Did you interview Mr. Paris to determine whether he had discussed the questions that were raised in this letter with me?

A Yes, I did, but I don't have the date.

Q Do you remember what he told you?

A (No response.)

Q Did you make notes of the conversation?

A Yes.

Q Where are the notes?

A I believe Mr. Connors has them.

MR. CONNORS: All I have is what was marked at the examination before trial.

THE WITNESS: From Mr. Paris.

THE COURT: We will take a recess at this time.

(Recess from 3:15 P.M. to 3:40 P.M.)

DIRECT EXAMINATION CONTINUED

BY MR. VIGDOR:

Q Mr. Putnam, before the recess you were telling me what steps you took after you received the memo from your Home Office dated August 3rd, marked Exhibit 31 for identification?

A I believe what I did is schedule a meeting.

THE COURT: You interrupted before, and you were looking for some Exhibit, and that is why I took the recess.

Q I believe you said that you discussed it with Mr. Paris to find out what he had discussed with me?

A I said I wasn't sure if I had, and I am still not. I don't believe that I talked to him at that point. I believe what I did was schedule the meeting with you.

Q So you did not then, after August 3rd and before meeting with me on August 13th, you did not in the interim address yourself to any of the other inquiries contained in Mr. Baker's memorandum of August 3rd?

A I assume I did not.

Q Then you and I scheduled the meeting on the 13th of August, isn't that right?

A Yes.

Q And that meeting took place in my office, did it not?

A Yes.

Q And I wrote you a letter on the following day, the 14th of August, 1973, did I not?

A Yes.

Q And that letter was intended to summarize the meeting that we had on the 13th, wasn't it?

THE COURT: No matter what it was intended for, the letter presumably will speak for itself.

Q And it accurately does summarize our meeting of the 13th, does it not?

A I believe the first two paragraphs do.

Q And the letter says:

"This will summarize the meeting which we had in my

office on August 13th, at which time I furnished you with a copy of my final account as Assignee for the Benefit of Creditors and as Receiver in Bankruptcy for the Paul R. Dean & Company for the period from April 4th, 1973, to June 19th, 1973, as well as a copy of a Brokers Blanket Bond for the Paul R. Dean Company, which I had in my file, and at which time I displayed to you certain checks showing gambling losses sustained by Paul R. Dean in May of 1972 and in July of 1972.

"In the course of our meeting, it became clear that the bond, which I had obtained from the files of the company, was not on the same form as the specimen bond to which you were referring from your file and that the Paragraphs 11 and 12 referred to by you in your recent correspondence were not contained in the bond which was in my file. You indicated that you would review this matter and communicate with me further. You indicated further that Paragraphs 11 and 12 of the specimen bond to which you were referring, brought about an automatic cancellation and required a recent request for additional time for discovery by the Receiver.

"Please be advised that I believe all necessary and requisite notice has been given by Paris-Budlong-Esse,

Inc., by phone and by letter, and by letters from me in my capacity as Assignee and Receiver and co-counsel for the Trustee and by my filing the Notice of Discovery form in April of 1973 and by newspaper publicity, copies of which are in your file.

"I hereby renew the offer contained in my last letter to you, dated July 27th, 1973, to permit you, or any other representative of your company, to meet with us to review the books and records of the Dean Company to verify the fact that covered losses in excess of the bond limit occurred prior to April 4th, 1973.

"We intend to strenuously contest any effort on the part of the bonding company to resist payment of this bona fide claim resulting from the activities of the insured's former employee, Paul Dean."

Now between the date of Mr. Baker's memo to you, Exhibit 31, and our meeting of August 13th, you had no further communications with your Home Office?

A Not until after I met with you.

Q And did you have another inter-office communication as to e meeting with me on the 13th?

A I have an inter-office communication on the 30th.

Q Is that from you to them, or them to you?

A That is from Mr. Baker to me.

Q Was nothing done by you after our meeting on the 14th before this, is that correct?

THE COURT: "Nothing done"? I'm sure the office didn't close down after your meeting.

Q I mean with reference to an investigation of the Dean Company claim on the bond?

A After my meeting with you?

Q That's correct.

A I discussed it on the phone with Mr. Baker. I sent in your August 14th, 1973, letter.

Q Did you have any further discussions with Mr. Paris in that period of time?

A Not that I am aware of.

Q Did you talk to Mr. Dye, who conducted the examination of the books?

A I don't believe I have ever talked with Mr. Dye.

Q And is it fair to say that the only thing that you did was to send Mr. Baker a copy of my August 14th letter?

A (No response.)

THE COURT: You talked to him on the telephone?

A And discussed our discussions, mine and yours, and what you showed me, what Mr. Vigdor showed me. I discussed that with Mr. Vigdor on the phone.

Q When did you do that?

A I don't have the date, but I would assume it would be the next day, which would have been the 14th or 15th.

Q And did you then receive this inter-office communication that you are holding from Mr. Baker?

A Yes, I did.

Q May I see that?

A Yes, you may.

(Document handed to Mr. Vigdor.)

MR. VIGDOR: Would you mark this for identification?

(Plaintiff's Exhibit 32 marked for identification.)

Q And this is Plaintiff's Exhibit 32 for identification, and dictates, in effect, the letter that you then sent to me on September 4th, 1973, word for word, in which you denied the claim and asserted all the defenses, is that right?

A Yes.

Q Then you, in fact, retyped that on the 4th of September

and mailed it to him and signed it?

A I would have dictated the letter and had it typed and sent it to you.

Q And so during this entire period of time, no one on behalf of Aetna accepted our at least two offers to meet with the firm of Coopers & Lybrand and with myself and with Mr. Carges and review the books of the company, is that correct?

A That's correct. We hadn't received a proof of loss.

Q And you never conducted any independent investigation of your own regarding the loss, is that correct?

A What do you mean by "independent"?

Q Did you interview Mr. Paris?

A Not at this time.

Q At what time? Did you ever?

A I might have talked to Mr. Paris on the phone. I did talk to him in February.

THE COURT: You are talking about some particular period and now you want to know if he ever talked to Paris?

MR. VIGDOR: I will ask between the time --

THE COURT: Ask it now, because he

doesn't know. He is referring to some other time outside the period he thinks you are referring to.

MR. VIGDOR: Okay.

Q Between the period May 1 and September 4, '73?

A Did I ever talk to him?

Q About this Dean loss?

A Not that I recall.

Q And I think you said that you never talked to Mr. Dye?

A I don't believe that I have ever talked to Mr. Dye.

Q Did you ever talk to Mr. Carges?

A Not that I recall.

Q You would have recalled if you had? He is sitting here.

A I don't remember.

THE COURT: Don't apologize if you don't remember, just because he criticizes you for it.

Q And Mr. Putnam, did you investigate the records that were on file in the Monroe County Courthouse in the assignment proceeding?

A I did not.

Q And did you come over to Bankruptcy Court and investigate the papers that were on file over in the Federal Building?

A No.

Q And did you examine transcripts of any of the testimony?

THE COURT: You didn't think they would be filing a claim on this bond in Bankruptcy Court, did you?

A No, Your Honor. I don't think I thought that. I did not got to Bankruptcy Court.

Q Were you interested in learning what kind of losses, or dishonesty, was involved in the Dean Company affairs?

A I was waiting for the Proof of Loss to be filed, to see what proof there would be.

Q Then I take it you conducted no independent investigation of your own?

A Not interviewing the people that you have mentioned, no.

Q Or anyone else?

A No.

Q Meaning no one else?

A Other than you.

Q That one meeting with me in August?

A And the correspondence that we had.

Q Which we have marked as part of Exhibit 26?

A Right.

Q Have there been any other communications between you and

the Home Office after the communication of August 30th, '73, marked Exhibit 32 for identification?

A I have a communication somewhere that asks the status of the suit after the lawsuit was filed, but other than that, that is all that I have.

Q Does your file show that the first I was able to obtain a copy of this renewal bond was sometime in November?

A My file doesn't reflect when you received your copy.

Q You would have no reason to quarrel with Mr. Michener's recollection in that regard?

A No, no reason at all.

Q When I met with you in my office on the 14th of August, I showed you some financial records of the company, didn't I?

A Yes.

Q And I told you that Mr. Dye's firm had done an exhaustive investigation and had examined the books and records and the checks and the ledgers and the journals and so forth, didn't I?

A Yes, you did.

Q And I told you that the results of that investigation were sitting in files and we would be delighted to sit down with you, and I would have Mr. Dye go over it --

THE COURT: That isn't what they were asking you.

MR. VIGDOR: I understand.

THE COURT: They were asking mainly when you, the company, had notice of the loss under the policy.

MR. VIGDOR: I understand.

Q Didn't I also show you some bills that I received from gambling casinos in Las Vegas, or for debts paid, and unpaid, by the Dean Company?

A That is what you said they were, yes.

Q I show you Exhibit 29 for identification and ask you if you recognize seeing that, or something like it?

A Something like it. If "Casino Item" means that is a gambling debt, then it is a gambling debt, and that is the type of thing you showed me. This one specifically I do not recall.

Q I showed you several of them, didn't I?

A Yes.

Q Your policy provided that the time for filing Proof of Loss was six months from the date --

MR. CONNORS: I will object to --

THE COURT: I will sustain the ob-

jection. The policy shows that. He can't add one iota to it.

MR. VIGDOR: I will withdraw the question, Your Honor.

THE COURT: And when I refer to the "policy," of course, I refer to the bond.

MR. VIGDOR: Yes, Your Honor. I will read one sentence, Your Honor, from Section 4 of the bond, the renewal bond, so-called:

"At the earliest practicable moment after discovery of any loss hereunder, the Insured shall give the Underwriter written notice thereof and shall also within six months after such discovery furnish to the Underwriter affirmative Proof of Loss with full particulars."

Then I would ask the Court to take judicial notice of the calendar and the fact that September 4th is less than six months from April 4th and that the last letter in Exhibit 26 --

THE COURT: What is that?

MR. VIGDOR: That September 4th, 1973, is less than six months from April 4th.

THE COURT: Don't ask me to take judicial notice. Just ask me to figure it out.

MR. VIGDOR: All right.

THE COURT: That is like asking me if tomorrow is one day after today.

MR. VIGDOR: I offer in evidence Plaintiff's Exhibits 28, 29, 30, 31 and 32, which I believe are the only Exhibits not already in evidence.

MR. CONNORS: I have no objection.

THE COURT: P-27 isn't in evidence.

MR. VIGDOR: I will offer it.

THE COURT: Up for consideration now and offered in evidence are Plaintiff's Exhibits 27, 28, 29, 31 and 32.

P-30 is in evidence.

MR. CONNORS: I have no objection.

THE COURT: They are received in evidence.

(Plaintiff's Exhibits 27, 28, 29,

31 and 32 marked in evidence.)

MR. VIGDOR: I have no further questions.

CROSS EXAMINATION

BY MR. CONNORS:

Q Mr. Putnam, you testified that at some point you wrote to Mr. Vigdor and sent him something called a Notice of Discovery form, is that correct?

A That's correct.

Q And it was your letter of April 19th that you sent Mr. Vigdor a Notice of Discovery form and asked him to complete it and return it to you?

A That's correct.

Q And on April 27th or thereabouts, you received, or at least the letter is dated April 27th, you received a letter from Mr. Vigdor addressed to you saying, "Enclosed find a completed Notice of Discovery form." Is that correct?

A That's correct.

Q And attached to it was your form having been filled in, is that correct?

A Correct.

Q Now when you sent the letter to Mr. Vigdor with the Notice of Discovery form, was it completely blank, the form?

A Yes.

Q Had anything been filled in on it?

A No.

Q When it was returned from Mr. Vigdor, it was signed by him, is that right?

A Yes.

Q And at the top it said, "Notice of Discovery of Loss Under Bond No.," and was filled in thereafter with the number, Bond No. 45 F 1526 BCA?

A Yes.

Q Was that number filled in there when you sent him the blank form?

A No.

Q As far as you know, that was filled in by Mr. Vigdor on or about the 27th of April?

A To the best of my knowledge.

Q Now that number makes reference to October 17th, '71, what we have been calling the new bond, or the renewal bond, am I correct?

A Yes.

Q Now at that time, on April 27th, did you later learn in your conversations with Mr. Vigdor that the only bond he had in his possession was the original bond that bore a

different number?

A Yes.

Q So that when Mr. Vigdor filled out this Notice of Discovery form, he made reference not to the bond that he had in his possession but the new one, is that correct?

A Yes.

Q That was in April of 1973, and April 27th, or thereabouts, is that correct?

A Yes.

Q The form says:

"IMPORTANT: This form is provided to facilitate the reporting and handling of a loss under the captioned bond. It is not a proof of loss. Insured must, in due time, file with the company an affirmative itemized statement of claim as provided by the bond."

Is that what it says?

A Yes, sir.

Q At some subsequent date, did you send to Mr. Vigdor a letter again reiterating the fact --

THE COURT: If you've got a letter, refer to the letter so he won't have to paraphrase it.

MR. CONNORS: All right.

Q On July 20th, 1973, did you write to Mr. Vigdor --

THE COURT: Don't ask him if he did because you've got the evidence that he did.

Q You didn't on the 20th of July --

THE COURT: Just read the letter, as much of it as you want in evidence.

Q I will read you the third paragraph of the letter, which reads as follows:

"In direct response to your question what is required, we must again refer you to the condition of the bond For your convenience we enclose a Proof of Loss form, which you may submit, or alternatively, may submit such other appropriate summary as you wish.

"Whichever summary form is used, it should be supported with whatever evidence you have of a covered loss."

You wrote that to him?

A Yes.

Q Have you, or did you at any time, subsequent to the time that you sent him the Notice of Discovery form, subsequent to the letter of July 20th, have you at any time received from Mr. Vigdor, from the Paul Dean Company, Inc., or any director of that company, any Proof of Loss in connection

with this claim that we are talking about here?

A No.

Q Now what you did receive from Mr. Vigdor, then, as I understand it, was an invitation to go down and go through the records and try to discover whether there was a loss or not?

A Yes.

Q In connection with the letter you received from Mr. Vigdor on the 27th of April, the form that he sent back said, among other things:

"The nature and circumstances of the loss are as follows:

"Funds of the company and funds of customers of the company were misappropriated and diverted over a period of time, resulting in losses."

A Yes, sir.

Q And it said, "The probable amount of loss is in excess of $250,000"?

A That's correct.

Q And nothing further, no itemization of what the losses were or when they occurred, am I correct?

A That's correct.

Q And accompanying that filled-in form, Mr. Vigdor writes a

letter saying: "Please advise whether we may anticipate payment of the claim"?

A That's correct.

Q Is that correct?

A That's correct.

Q When you met with Mr. Vigdor on August 13th, during the course of that conversation, were you advised by Mr. Vigdor that that was the first time that he had known that the Bond No. 45 F 1526 BCA was a different bond than the number --

THE COURT: The original bond --

MR. CONNORS: The original bond.

A That is what I recall.

MR. CONNORS: Thank you.

MR. VIGDOR: Are you through, sir?

MR. CONNORS: I am through.

REDIRECT EXAMINATION

BY MR. VIGDOR:

Q Mr. Putnam, you were unwilling to meet with me before August 13, 1973, without your Home Office's permission, isn't that correct?

A I would have to get their approval to meet with you.

Q In point of fact, you avoided returning my phone calls

during that period of time?

A I did not, sir.

Q In any event, we could not establish a meeting until you finally --

THE COURT: You didn't have a meeting until August 13th, and you couldn't have a meeting unless it was approved by the Home Office, is that right?

A I would not be able to have a meeting unless it was approved.

THE COURT: That sums it up, doesn't it, no matter how many words you put into it?

Q Mr. Putnam, when I met with you on August 14th, I had a great number of Dean Company records present in my office, did I not?

A You said that you did, yes.

Q I offered to show you those files, did I not?

THE COURT: What files? Proofs of claim he wasn't interested in. That is the bankruptcy estate. He was talking about investigating claims covered under a particular policy. He didn't insure losses in bankruptcy.

MR. VIGDOR: No, Your Honor.

THE COURT: He is trying to tell you he wasn't interested in all the papers you had in the Dean bankruptcy file in your office, no matter how ominous they were.

MR. VIGDOR: If Your Honor please, in a fidelity bond of the sort --

THE COURT: In a particular bond, not "of the sort." That particular bond.

Q In this particular bond, would the use of company funds by a company employee be a covered loss in the normal circumstances?

MR. CONNORS: I object to that.

THE COURT: I will sustain the objection.

That is my job, to construe and interpret this policy. This witness can't add one iota to it.

Q Did I offer to show you checks by which funds were diverted from the company by Mr. Dean?

A You showed me Mr. Dean's personal checks for gambling, et cetera.

Q Did I claim that to be a covered loss at the time?

THE COURT: What did he say about it?

A You said, as I recall, and I can't paraphrase, but I believe that you said that these were checks that Mr. Dean used in gambling in Las Vegas.

Q Did I also indicate that I had the records and ledgers there showing what we claimed to be improper transfers from company funds to Mr. Dean personally in which we claimed to be covered losses?

A You said that you did.

Q Did I offer to show them to you then and there in my office that afternoon?

A You offered to show me the ledger.

Q Did I ask you just what you wanted to see at that time?

A Yes, I believe you did.

Q And did you tell me that you would discuss it with your Home Office and review the matter and let me know what it was that you wanted?

A I believe that I said that I could not present the claim, that I would, in fact, review it with my Home Office, pursuant to our discussion that we had.

Q You didn't tell me that the records that I was offering to show you did not constitute any proof of loss, did you?

A As I said before, the proof is to be submitted, and at that time it is decided whether or not this is proper proof.

Q Wasn't I offering you at that time copies of checks and copies of ledgers and records of the company?

THE COURT: A good many checks and records of the company didn't pertain to losses under the policy at all, and you don't even contend they do?

MR. VIGDOR: No. That's correct, Your Honor. I was offering the checks showing diversions of corporate funds to Mr. Dean's personal activities.

THE WITNESS: You showed me checks, yes.

Q Your own manual on claims says that a proof of loss is a piece of documentary evidence, doesn't it?

A I believe in part that is what it says.

Q It says it is usually a means of procuring necessary evidence which shall not otherwise be procured at all, or cannot be procured with reasonable convenience or reasonable expense, a means of putting the insured definitely on record in cases where that procedure seems to be necessary?

THE COURT: Now this is in the nature of argument. You can just as well do that in the brief, because you are doing it from documents that are in evidence.

MR. VIGDOR: All right. I have no further questions, Your Honor.

(Witness excused.)

MR. VIGDOR: I want to be sworn, Your Honor.

MR. PEARL: And with the Court's permission, I will conduct the examination of Mr. Vigdor.

J U S T I N L. V I G D O R,

called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARL:

Q Mr. Vigdor, where do you reside?

A Brighton, New York.

Q You practice the profession of law at what address?

A 25 East Main Street, Rochester.

Q At what time did you become Assignee for the Benefit of Creditors --

THE COURT: That is all in evidence. You don't need that. It is documented and in evidence.

Q What action did you take immediately upon becoming Assignee for the Benefit of Creditors?

A I engaged Coopers & Lybrand to do an investigation of the company's financial affairs and went to the offices of the company in Rochester and in New York City in an attempt to reduce the records to the possession and control of the Assignee and to ascertain the company's financial condition.

Q Did you have occasion to visit any of the banks or safe deposit boxes at the --

THE COURT: I don't want to hear everything that happened during the bankruptcy proceeding and during this Assignee proceeding. What I want to know is what was done pertaining to coverage under this particular policy, or under two, if you want, two policies.

MR. PEARL: Yes, Your Honor.

Q In your capacity as Assignee, did you discover losses to the Dean Company?

A I discovered what I claim to be --

THE COURT: What do you mean "losses"? This was a bankruptcy. They were insolvent. You anticipated, I suppose, thousands of claims. Those were losses. That isn't the kind of loss you mean, is it?

MR. PEARL: No, Your Honor. The type of loss I mentioned occasioned --

THE COURT: Don't tell me, because he is answering the question -- ask him.

Q Mr. Vigdor, in your capacity as Assignee for the Benefit of Creditors, did you discover losses to the Dean Company occasioned by the dishonesty of an employee?

A I found --

MR. CONNORS: I'm going to object to that as a conclusion. That is the whole issue of the lawsuit. That is before the Court.

THE COURT: You mean who determines who is an employee?

MR. CONNORS: That's right.

THE COURT: You considered everybody as an employee, didn't you?

A I did, Your Honor.

THE COURT: And that excluded nobody in the outfit?

A That's correct.

THE COURT: Not the two owners of the stock even?

A That is correct, Your Honor. I investigated the activities of each of the employees of the company and found after conferring with Mr. Dye and his staff and examining the records that we believed there to be losses occasioned by the dishonesty of Mr. Dean as a result of his using large sums of corporate monies for personal investments and personal gambling activities, and I determined that we would file a claim under the Aetna bond, which Mr. Dye had found in the office in Rochester on the 4th of April, 1973.

THE COURT: You mean the original bond?

A The bond, the original bond, which was the only bond that we had in this matter.

Q Mr. Vigdor, did you find out when the Dean Company first discovered the losses that you were claiming?

A I discovered them within a day or two or three after --

THE COURT: Not you -- the company.

A The only discovery that I learned of was Mr. Nichols' statements that he first learned about the condition of the company in the week end prior to the assignment, the last week end in March, 1973, and I had learned of it upon taking over after April 4th, '73.

THE COURT: You weren't an officer of the company?

A No.

THE COURT: But there were officers of the company then?

A That's correct, Your Honor.

THE COURT: And they were Dean and Nichols and Mrs. Poluch, who was an officer for a particular reason, to allow her to sign some checks?

A That is true.

Q Mr. Vigdor, what was the nature of the losses that you discovered, if you haven't already answered that question?

A We claimed losses based upon the payment of corporate funds, fictitiously as interest payments on non-existent bonds and by transfer of large sums from the company to Dean without the approval of the Board of Directors of the company, thereby --

THE COURT: Without the approval of who?

A Of the company's Board of Directors.

THE COURT: That means by one director, doesn't it, because there was only one director besides Dean himself?

A That's correct, Your Honor, thereby putting the company in a position where it had large obligations and no ability to meet those obligations.

Q Mr. Vigdor, did you know at the time that the original bond was discovered by Mr. Dye that the number of that bond was different from the number of the bond that the Aetna Casualty Company was maintaining at the time?

THE COURT: I think what you mean is: "Did you know that the original bond had a number different than the renewal bond?"

MR. PEARL: Yes, Your Honor.

THE WITNESS: No, I did not. I paid no attention to the number on the bond. I assumed we were talking about a single bond, and I know as a common matter when policies --

THE COURT: No matter what you know,

you were talking about one bond?

A That's correct.

THE COURT: Namely, the original bond?

A Which we believed that provided continuous coverage, because we had ascertained that the premiums had been paid without interruption, and I was never advised by anyone --

THE COURT: Now wait a minute. He is examining you, and you can either do it in a narrative form or do it with him. If you do it with him questioning you, let him propound the questions. You can do it, if you want to, right now in a narrative form.

Q Mr. Vigdor, were you ever apprised that the form of the bond had changed?

A Never until August 14, 1973.

THE COURT: Now what that means is the bond was different?

MR. PEARL: That's correct.

Q Were you ever advised by Mr. Paris that this new bond, this renewal bond, was in existence?

A No.

Q Did Mr. Paris ever discuss with you the provisions of Section 11 and Section 12 of the renewal bond?

A After I got the letter from the Aetna, which I believe was dated May 10th, 1973, part of Exhibit 26 -- may I see that, please, Mr. Pearl.

(Plaintiff's Exhibit 26 handed to the witness.)

THE WITNESS: Yes, in which they referred to Sections 11 and 12 of the bond. I had a telephone conversation with Mr. Paris in which I told him that I didn't know what they were talking about, because the bond that we had had no Sections 11 and 12, and could he please educate me on what it was all about.

And I think his words were that I should communicate with them and attempt to sit down and straighten the thing out and find out what it was all about.

Q Did you attempt to do that?

A That was the whole course of our subsequent actions and reflected by my correspondence and phone calls to Aetna prior to August 14, 1973.

Q And did you make phone calls to Mr. Putnam inquiring --

THE COURT: There was one meeting, wasn't there?

A Only on August 13th.

THE COURT: August 13th?

A I'm sorry. I said the 14th.

Q Did you make the phone calls to Mr. Putnam?

A A number of them during the months of June and July.

Q And did he respond to those phone calls?

A No, he did not, except --

THE COURT: That is already in evidence and very frankly, I don't pay attention to that, that somebody didn't answer your telephone call.

Q Did you have occasion to forward portions of a file to Mr. Paris?

A I sent Mr. Paris my entire file, copies of everything in the file.

THE COURT: Including all the bankruptcy claims?

A I can't say, Your Honor.

THE COURT: You had thousands of them?

A No, sir.

THE COURT: They didn't have anything to do with what you were investigating with Putnam?

A No, sir. As a matter of fact, we only have fifteen or twenty bankruptcy claims, but we didn't send those.

THE COURT: That is, I mean if you didn't have any -- you anticipated thousands of them there. You knew he wasn't interested in the claims in bankruptcy?

A No.

THE COURT: That isn't what he was after at all?

A On July 23rd I enclosed my entire file. I can't tell you at this moment what that was.

THE COURT: What file?

A The correspondence with Mr. Putnam concerning the Aetna fidelity bond claim, and I said, "Anything you can do to specifically find out what they want to know to speed the claim would be greatly appreciated.

"Also, could you please arrange to get the Receiver bond refund.

"Thank you very much for your assistance."

Q Did Mr. Paris ever respond to your letter?

A I have no recollection or record of a written response, and I have no recollection of an oral response.

Q Did there come a time in April of 1973 in which you had a conversation with Mr. Paris regarding this claim?

A Right after the assignment and within a day or two after we found the bond and we notified Mr. Paris to make a claim under the bond orally. I had a telephone conversation with Mr. Paris, and at that time he indicated to me that --

MR. CONNORS: I object to what he indicated.

THE COURT: You are talking about claiming the bond? You mean the renewal bond?

A The original bond, Your Honor.

THE COURT: Oh! You are talking about Mr. Dye's finding it?

A That's right, Your Honor. In the telephone conversation with Mr. Paris, in the course of which I discussed with him the fact that we would be filing a claim under that bond, that I needed an Assignee bond, and I wondered whether he could arrange for Aetna to provide that or

whether there would be any conflict of interest, that we wanted to assert claims under this bond, and he indicated to me in the course of this conversation, in words or in substance, that Aetna has been properly notified that the bond which I thought at the time was a $200,000 coverage had been increased to a $250,000 coverage, because our copy of it did not have that rider, and that the full amount had been reserved, and it was merely a matter of the mechanics. He also indicated to me he would talk with Aetna and see whether the Underwriting Department would consider underwriting me on the Assignee bond, which I needed to file in the Monroe County Court.

Q Did he indicate to you whether there was a conflict?

A It subsequently appeared that Mr. Michener's willingness to issue the bond to me on the 12th of April, 1973, that they did not regard it as a conflict because an Assignee bond was issued to me by Aetna on April 12th, 1973.

MR. PEARL: I have no further questions, and if Mr. Vigdor wishes to give a narrative at this time --

THE COURT: Oh, no. You have to make your choice. You can't do both.

MR. PEARL: I have no further

questions.

CROSS EXAMINATION

BY MR. CONNORS:

Q Mr. Vigdor, when did you come into possession of this original bond that we are speaking of?

A Probably it was on the 4th or 5th of April.

Q April, 1973?

A That is right.

Q And it was delivered to you by Mr. Dye and he told you that he had found it at the Dean Company offices?

A No. I came up to the Dean Company offices, and he and Mr. Krebbecks were working there, and we went through all of the file cabinets and all of the records, and he invited my attention to --

THE COURT: All he wants to know is when you came into possession of that bond?

A The 4th of April or the 5th of April, '73. It was in a file cabinet.

Q I assume you still have it, or you have kept it since that time?

A That's right.

Q On the very front of it, it does bear a number, does it not?

A That's correct, it does.

Q And on April 9th, that is within three or four days, did you receive a copy of a letter, too, addressed to William Michener from Peter Paris?

A I'm sure I did.

Q Did that copy of the letter that you received refer to a Bond No. 45 F 1526 BCA?

A It clearly does.

Q And that was a different number than on the bond that you had in your hand?

A It must have been.

Q But you paid absolutely no attention to it because it never --

THE COURT: He didn't ask you if he paid any attention to it?

A That's right.

THE COURT: You see, that is the trouble with lawyers. They like to talk all the time, and I think the judges have that fault, too.

Q At any rate, in that letter that you received about four days after, you got ahold of the bond, and you received a letter making reference to a different numbered bond.

Now speaking of attorneys, you do deal with abstracts

of title with insurance policies, and you know they all have different numbers on them, right?

A Do you want me to answer that, Mr. Connors?

Q Yes.

A My automobile policy changes numbers every time --

THE COURT: Let's reserve the outside conversations -- we are not interested in your automobile policy, nor mine either.

Q Now on April 27th, did you fill out and return to the Aetna Casualty & Surety Company something called a Notice of Discovery of Loss?

A I did indeed.

Q Did you have in front of you this original bond that you had found at the Dean Company offices?

A No, I did not.

Q You prepared it without reference to that bond?

A That's correct.

Q But you filled in on the Notice of Discovery of Loss a different bond number, a number that we now know is the new bond?

A We copied that from the correspondence that was in the file at that point.

Q And on the basis of this, ultimately in August, you dis-

covered there was another bond and that you had been talking about something different?

A That's correct, on August 13th.

Q And you say that Aetna was being an obstructionist by not handing over to you the proper bond when you were talking about the new bond in your correspondence, were you not? You were using its number?

A No. I do say that Aetna was an obstructionist -- you are right, Mr. Connors. I had been trying to find out what Sections 11 and 12 related to for several months at that period, and I never succeeded in getting a copy of the renewal bond until even after the claim had been denied, before they gave me one.

Q And did you ever ask anybody at Aetna where Sections 11 and 12 were in the bond, the number of the old bond?

A I wrote Mr. Paris that letter when I first heard about Sections 11 and 12 and told him I didn't know what they were talking about. I never got an answer to that, and I reiterated that, and I told that to Mr. Putnam on the 9th, when he finally deigned to meet with me --

Q The plain fact of the matter is, is it not, that for about four, five months you just never noticed there was a different number between the bond everybody was talking about

and the one you had in your possession?

A That is absolutely correct.

Q You plain didn't look?

A I was led to believe it by the company and the agent that there was continuous coverage at all times, and that the premium had always been paid and that the company was covered.

Q You weren't led to believe that bond number was anything other than what it was, were you?

A I paid no attention to the number.

Q Are you telling us, then, that on April 4th or April 5th, the first day or the second day that you were the Assignee, that you called Mr. Paris and said you were going to make a claim and he said, "Don't worry about it. It has all been reserved," and this is the day after you were appointed?

A It was about the second day after, say about the second day after, when I talked to him about getting an Assignee bond and I told him that we had found the fidelity bond and were asserting a claim. He said, "The amount has been increased from two hundred to two hundred and fifty,"because we thought it was a $200,000 bond.

Q He told you what the coverage was?

A And he also told me, "Aetna has been properly notified.

Don't worry about it. The amount is reserved."

As a matter of fact, Mr. Dye and I included that as an asset in our first account filed at the Monroe County Courthouse.

Q And that was before you had submitted anything, any kind of discovery notice or anything else to Aetna, is that right?

A That is correct. We had not submitted at that point a discovery notice; however, we were ready, willing and able to make all the records of the company as summarized by Coopers & Lybrand in whatever form Aetna wanted, available to them if they just told us what they wanted.

Q And you were waiting for them to tell you what the losses were that they wanted to find out about, is that it?

A I was waiting for somebody to talk to me and engage in a constructive dialogue, rather than play what I call "Mickey Mouse games."

THE COURT: I'm not much interested how you view it. I am more interested what the facts are.

Q Did you ever make any effort to submit a Proof of Loss as definite notice of what the losses were when they occurred? Did you ever do that?

A Mr. Connors, on August 13th, I had everything there in the office for Mr. Putnam to tell me --

Q I'm asking if you supplied a Proof of Loss --

A Regarding the documentary evidence, I had there as proof of loss in the context of this case, and moreover my obligation to submit one terminated when you denied liability prior to the expiration of six months from the date of the policy.

THE COURT: That is why lawyers are reluctant to have attorneys in the case testify, because they have been living with the case so long that they want to get it all on the record.

Now I don't put that out as criticism, but I would like to get the facts in this case and not your personal viewpoint.

Q Have you ever submitted a form, "Proof of Loss" to Aetna?

A On a form with that name, no.

MR. CONNORS: Thank you.

MR. PEARL: I have no further questions.

(Witness excused.)

MR. VIGDOR: The plaintiff rests,

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Excerpts of Trial Transcript.
Recess.

THE COURT: I'm not going to start your case tonight. It is twenty minutes to five. We will recess until tomorrow morning.

(At 4:35 P.M., an adjournment was taken to Wednesday, July 9, 1975.)

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Excerpts of Trial Transcript.
Motion.

Rochester, New York

Wednesday, July 9, 1975

10:00 A.M.

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(Trial resumed.)

MR. CONNORS: If Your Honor please, at the end of the Plaintiff's evidence, the Plaintiff having rested, the Defendant at this time moves for a direction of a verdict in favor of the Defendant and for a dismissal of the Plaintiff's complaint on the ground that the Plaintiff failed to prove a prima facie case, has failed to prove any covered loss that was discovered during the term of the bond and has failed in all respects to prove a cause of action.

THE COURT: Motion denied.

MR. CONNORS: If the Court please, I offer in evidence at this time Defendant's Exhibit 1 for identification, which was previously marked for identification.

MR. VIGDOR: No objection.

THE COURT: It is received.

(Defendant's Exhibit 1 marked in evidence.)

Excerpts of Trial Transcript.
Portions of Deposition of John L. Nichols read into Record.

MR. CONNORS: If the Court please, I propose to read at this time some short portions of a deposition taken in this action, of John L. Nichols, on the 9th of June, 1975, at eleven A.M., and beginning at Page 3, and the questions and answers are as follows:

"Question: Mr. Nichols, where do you live, sir?

"Answer: 80 Knollwood Crescent.

"Question: Where are you employed?

"Answer: Well, I'm not actually employed, if you mean in the sense of a salaried position.

"Question: Have you in the past had some connection with the Paul R. Dean & Company?

"Answer: Yes, I have.

"Question: What is your connection with that company?

"Answer: My connection was as an investor."

And on Page 5, it reads as follows:

"Question: Since some time in 1969, Mr. Nichols, is it a fact that Mr. Dean and yourself each owned an equal number of shares in the corporation?

"Answer: Correct.

"Question: And were the directors, Mr. Smookler having left at that point?

"Answer: Yes."

On Page 6. (Reading):

"Question: What part did you play in the operation of the corporation?

"Answer: The day-to-day operation I had no active role in.

"Question: Was Mr. Dean the one that actually ran the bond business?

"Answer: He was the President of the corporation.

"Question: He ran the company?

"Answer: He was the sole operating officer of the -- he was the bond broker. He was the man that started the company and --

"Question: What was your role in the company?

"Answer: I was an investor, and I loaned money to the corporation and attempted to raise money at various times for the corporation, but that really is the extent of my involvement, that way, with the corporation. I am not a bond broker or stockbroker."

And on Page 31, at the bottom, it reads as follows:

"Question: As far as the general day-to-day run of the bond business and the purchase and sale of municipal bonds, I gather that the situation was that this was done by Paul Dean, and you left that to him, is that correct?

"Answer: Yes.

"Question: Whatever he did in that connection, I assume was with your approval as a director and stockholder of the corporation?

"Answer: Yes.

"Question: When you had occasion to discuss matters of this sort with him, you left it up to him as the manner in which he operated that part of the business?

"Answer: It was his company. He was the President, and I relied on his judgment and what he told me.

"Question: As far as you were concerned, Paul R. Dean was the Paul R. Dean & Company, is that right?

"Answer: That's right."

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